4126.

SUPREME COURT OF THE UNITED STATES.

Nos. 92 and 93.

WILLIAM PINKNEY WHYTE, ADM'R DE BONIS NON OF JOHN GOODING, DEC'D, APPE'T,

vs.

ROBERT M. GIBBS AND CHARLES OLIVER, SURV'G EX'ORS OF ROBERT OLIVER, DEC'D,

AND

ROBERT M. GIBBS AND CHARLES OLIVER, SURV'G EX'ORS OF ROBERT OLIVER, DEC'D, APP'TS,

vs.

WILLIAM PINKNEY WHYTE, ADM'R DE BONIS NON OF JOHN GOODING, DEC'D.

APPEALS FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

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4127

THE UNITED STATES OF AMERICA,
District of Maryland, to wit.

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-six:

Present, the Honorable William F. Giles, judge of Maryland district; William Meade Addison, esquire, attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

WILLIAM P. WHYTE, adm'r d. b. n. of John Gooding,
vs.
ROBERT M. GIBBES and CHARLES OLIVER, surv'g ex'ors of Robert Oliver.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-five, the complainant, by his solicitor, filed in the circuit court here a mandate from the Supreme Court of the United States, in the words and of the tenor following, to wit:

Mandate.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the honorable the [SEAL.] Judges of the Circuit Court of the United States for the district of Maryland.

Whereas lately, in the circuit court of the United States for the district of Maryland, before you, or some of you, in a cause between John Gooding, junior, administrator de bonis non of John Gooding, deceased, complainant, and Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, deceased, defendants in equity, the decree of the said circuit court was in the following words, to wit:

"It is thereupon, this third day of December, in the year eighteen hundred and fifty-three, by this court adjudged, ordered and decreed, that the bill of the complainant be, and the same is hereby, dismissed; and that the complainant pay the defendants their costs of this suit, to be taxed by the clerk," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-four, the said cause came on to be heard before the said Supreme Court, on the said transcript of

the record, and was argued by counsel; on consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that the said complainant recover against the said defendants fifty-eight dollars and fifteen cents for his costs herein expended, and have execution therefor. And it is further ordered, that this cause be, and the same is hereby, remanded to the said circuit court for further proceedings to be had therein, in conformity to the opinion of this court.

Feb'y 15. You therefore are hereby commanded that such execution and further proceedings be had in said cause in conformity to the opinion and decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding. Witness the Honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-four.

Costs of complainant, taxed by Wm. Thos. Carroll, clerk of the Supreme Court of the United States:

Clerk,	$38 15
Att'y,	20 00
	$58 15

Afterwards, to wit, on the second day of April, in the year of our Lord one thousand eight hundred and fifty-five, the said Robert M. Gibbes and Charles Oliver, surviving executors of the said Robert Oliver, by Reverdy Johnson and James Mason Campbell, their solicitors, filed in the circuit court here their petition, praying for leave to file a supplemental answer to the bill filed in this cause, in the words and of the tenor following to wit:

Petition.

In the Circuit Court of the United States for the Maryland District.

GOODING'S ADM'R
v.
OLIVER'S EX'ORS.

To the honorable the Judges of the Circuit Court of the United States for the Maryland District, in equity.

The petition of the defendants in this case humbly showeth, that the above entitled cause has been returned to this honorable court upon the mandate of the Supreme Court of the United States reversing the decree heretofore pronounced by this court, and directing further proceedings therein in conformity with the opinion of the appellate tribunal aforesaid.

That by the opinion of the Supreme Court therein, it is declared that the title set up by your petitioners in their answer to the share in the Mexican Company of the complainants' intestate cannot be maintained by them.

That as a consequence of that opinion, and under the agreements and proceedings in the cause, your petitioners suppose themselves bound to account with and pay over to the complainant's intestate whatever may be found, on a reference to a master, to be the amount of said share in their hands properly belonging to said administrator.

That on the 22d March, 1825, a power of attorney was executed to the testator of your petitioners by the person (among others) then exclusively claiming title to and in possession of, and representing the share and interest of said Gooding in the Mexican Company, by virtue of which he was authorized and empowered to claim, solicit payment of, and receive said share and interest of and from the government of Mexico, and its officers and authorities, and all other persons, which said power contained all the usual clauses in such instruments. That the testator of your petitioners accepted the said power of attorney, and entered upon the performance of the duties confided to him by it, and, as he was authorized by its terms to do, appointed under him as sub-attorneys to attend to the prosecution of said claim in virtue of said power, Dennis A. Smith, esquire, since deceased, and John Mason, jun'r, esquire, of Georgetown, in the District of Columbia, and that their said testator, from the time of his appointment as attorney as aforesaid till his death in 1834, used various efforts and every diligence as well at home as abroad, and both by himself and his delegates aforesaid, and by other persons, to forward and advance and procure the allowance of the said claim by the Mexican authorities.

That since the death of the said testator, and the recovery of the said claim, your petitioners were compelled to pay considerable sums of money to resist (which they did successfully) an alleged title thereto set up by the permanent trustee of the said Gooding in insolvency.

That it is just and equitable that the said share of said Gooding should contribute a reasonable compensation for the services rendered as aforesaid, in its prosecution by the testator of your petitioners, and that it should reimburse to your petitioners the sums of money paid by them in defence of the same, which defence has inured, as well as the services aforesaid, to the benefit of the present complainant.

That they desire to put in a supplemental answer setting out the services rendered by their testator in the prosecution of said claim under the power of attorney aforesaid, and also the payments made by them in resisting the alleged title thereto so as aforesaid set up.

That they are advised that it is safer for them to set up those their defences by supplemental answer, (with the leave of the court for filing the same first had and obtained,) in order that no objection may be taken to the testimony to be adduced in support thereof, upon the ground that they have not been put in issue by the pleadings.

That the reason why said new matters thus proposed to be put on record were not inserted in their original answer is, that they supposed themselves to be not collectors merely, but absolute owners of the said claim under the decree of the court of appeals of Maryland, awarding it to them, fortified as that decree was by the refusal of the Supreme

Court to interfere therewith by writ of error, and that such was the opinion and advice to them of their solicitors, and that they acted upon such opinion and advice, and that such opinion and advice, though since pronounced erroneous by the Supreme Court, was not at the time when given, and under all the circumstances, unreasonable.

Wherefore your petitioners pray that your honors will allow them to file their supplemental answer on oath, setting forth the new matters aforesaid.

R. M. GIBBES,
Act'g Ex'r.

REVERDY JOHNSON,
J. M. CAMPBELL,
Sol'ors for Pet'rs.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

STATE OF NEW YORK, *City of New York.*

Be it remembered that on this thirty-first day of March, A. D. 1855, before me, the subscriber, a commissioner appointed by the circuit court of the United States, in and for the 2d circuit and southern district of New York, personally appeared Robert M. Gibbes, esq., and made oath on the Holy Evangely of Almighty God, that the matters and things stated in the foregoing petition are true to the best of his knowledge, information and belief.

In witness whereof, I have hereto set my hand and seal, on the day and year above written.

GEO. W. MORTON, [L. S.]
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, John W. Nelson, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of George W. Morton, whose name is subscribed to the annexed certificate of acknowledgment, and that the signature to the same is in his proper handwriting; and I do further certify that he was at the time of signing the same a commissioner duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this thirty-first day of March, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the seventy-ninth.

[SEAL.]

J. W. NELSON, *Clerk.*

And on the same day, to wit, the second day of April, in the year of our Lord one thousand eight hundred and fifty-five, John Barney and Charles F. Mayer, permanent trustees of John Gooding, by their solicitors filed in the circuit court here a petition in the words and of the tenor following, to wit:

Petition of John Barney and Charles F. Mayer, Permanent Trustees of John Gooding.

In the Circuit Court of the United States for the fourth circuit in and for Maryland District.

JOHN GOODING, jun'r, adm'r de bonis non of John Gooding,
vs.
ROBERT M. GIBBES and CHARLES OLIVER, surv'g ex'rs of Robert Oliver.
} In Equity.

To the honorable the Circuit Court of the United States for the fourth circuit, for the District of Maryland:

The petition of Charles F. Mayer and John Barney, of the city of Baltimore, respectfully shows, that your petitioners were appointed, and by giving bond with duly approved securities became qualified to act as permanent trustees of one John Gooding, under his application, on the third day of October, in the year eighteen hundred and twenty-nine, to the commissioners of insolvent debtors for the city and county of Baltimore.

And your petitioners claim that, as permanent trustees aforesaid, there vested in your petitioners a demand of said insolvent debtor against the Mexican republic, which accrued to him against said government by that government—assumption and undertaking in the year eighteen hundred and twenty-four; and which demand, as a part of an entire claim, was adjudicated and awarded upon by the commissioners for claims against said republic, acting under the first article of the convention between the United States of America and the Mexican republic, bearing date the eleventh day of April, in the year eighteen hundred and thirty-nine; the said adjudication and award being in favor of David M. Perine and John Glenn, as trustees, under an assignment from Robert Oliver's executors, Robert M. Gibbes, Charles Oliver, and Thomas Oliver, who made said assignment under color, so far as regards the interest of your petitioners, of an invalid assignment from a party professing to represent the said John Gooding. And your petitioners state, that under said award said Glenn and Perine received and paid over to said executors of Robert Oliver a very large sum of money; and that John Gooding, jun'r, the complainant in the above entitled cause, has in said cause exhibited his bill, claiming as administrator de bonis non of John Gooding, now deceased, and the said insolvent debtor, the said sum of money, and interest thereon, so received by said executors, and seeking a decree therefor

in favor of said complainant against said Robert M. Gibbes and Charles Oliver, now surviving executors of said Robert Oliver, and pretending thereto as if said claim were the property of said complainant as administrator, and not as it truly was, and as is the claim to said amount and interest paid to said executors, the property and right of your petitioners as permanent trustees aforesaid.

And your petitioners state that they have, in assertion of their claim and rights to said amount and interest, exhibited their bill in the circuit court for Baltimore county, against said John Gooding, administrator as aforesaid, and against said surviving executors of Robert Oliver, claiming the payment over to these petitioners by said executors, of said amount and interest; which bill is now in said court pending.

Wherefore your petitioners now pray of this honorable court its order staying any proceedings in the said cause of said John Gooding in your court, until the matters in controversy as aforesaid, between your petitioners and said John Gooding, jr., be determined in the said circuit court for Baltimore county; and such order further, or other in the premises, as for the case of your petitioners and for their protection, shall be, in the judgment of this honorable court, equitable and fit. And to such end, your petitioners pray subpœna or order for notice, in any manner that this court may deem suitable, to said Gooding and said Robert M. Gibbes, and Charles Oliver, in respect of this petition, and the allegations and claim thereof.

DAVID STEWART,
JNO. NELSON,
Solic'rs for Petitioners.

CITY OF BALTIMORE, *to wit:*

On this 3d April, 1855, before me the subscriber, a justice of the peace in and for said city, appears Charles F. Mayer, and makes oath that all that is stated in the aforegoing petition is true to the best of his knowledge and belief.

WM. B. HAYWARD.

Afterwards, to wit, on the seventh day of April, in the year of our Lord one thousand eight hundred and fifty-five, the complainant, by his solicitors, filed in the circuit court here his answer to the petition of the defendants for leave to file a supplemental answer in the words and of the tenor following, to wit:

Answer of the Complainant to the Petition of the Defendants for leave to file Supplemental Answer.

Circuit Court of the United States.

JOHN GOODING'S ADM'R
vs.
OLIVER'S EX'RS.

The answer of John Gooding to the petition of said executors respectfully states:

That the prayer of said petition ought not to be allowed for the reasons following, to wit: That it is not alleged in and by said petition

that the facts therein stated, and sought to be made the subject of a supplemental answer, were newly discovered facts since the answer to the original bill filed in the above cause, or that they were omitted by mistake to be inserted or alleged in their said original answer, or that the petitioners desired and offered to allege and state them therein, but were prevented from so doing by the advice of their solicitors.

That the facts sought to be introduced in the proposed supplemental answer, appears by the pleadings and proofs in the cause referred to in said petition, were known fully to said executors long before the filing of the original bill in this cause, and were omitted by said executors to be stated in their answer, as is alleged in their petition, because of their misapprehension of the law, which, as your respondent avers, forms no ground for an application for leave to file a supplemental answer.

That the facts alluded to in said petition as the ground of the prayer therein contained are not specifically set forth and *formerly* and properly stated; that although it is admitted that said Robert Oliver in his lifetime accepted the power of attorney, as stated in said petition, yet it is denied that said instrument was signed by this respondent's intestate, or that he had any contract of any sort with the said Oliver to prosecute his claim against the said Mexican government; and that any claim which said executors could possibly have had ought to have been preferred against the entire fund in the case of Thomas and White vs. Dennis A. Smith and others, to which said executors were parties, but this respondent avers that said executors had no claim against anybody for or on account of any services rendered by said Oliver during his life, as nothing was recovered from the Mexican government during his life, nor until five years after his death, and commissions for such services are wholly contingent in their nature, upon a successful prosecution of the claims.

This respondent denies that he employed any one to resist the claim set up in the case of Thomas and White vs. Dennis A. Smith and others, by the permanent trustee of this respondent's intestate, to the fund in dispute, or that he can be liable for the services of any one employed by said executors and not by himself. But this respondent is informed, and believes, and therefore charges, that said executors did not employ or pay any one to resist the claim of said permanent trustee, otherwise than by engaging solicitors to recover the amount of said share for themselves and as their own property; and that this respondent believes, and therefore charges, that he will have to pay for the recovery of the amount of said claim or share from said executors a sum at least as great as said executors expended for services rendered to them in said cause; that the claim preferred in said petition to be allowed as compensation out of the amount coming from said executors to this respondent is directly opposed to the decree and decision of the Supreme Court in the above cause.

That an application to put in a supplemental answer in a cause, after a decree therein, is unprecedented, and is never entertained by courts of equity, even after a cause has been set down for hearing.

G. L. DULANY,
H. W. DAVIS,
Solicitors.

Afterwards, to wit, on the fifth day of May, in the year of our Lord one thousand eight hundred and fifty-five, the court here made and passed an order dismissing the petition of John Barney and Charles F. Mayer, permanent trustees of John Gooding, in the words and of the tenor following, to wit:

Order of Court dismissing the petition of John Barney and Charles F. Mayer, permanent trustees of John Gooding.

JOHN GOODING, adm'r de bonis non of John Gooding,
vs.
OLIVER'S EX'RS.

The petition of John Barney and Charles F. Mayer, permanent trustees of John Gooding, having been submitted to the court, it is thereupon, this fifth day of May, 1855, ordered that the said petition be dismissed with costs.

R. B. TANEY,
WILLIAM F. GILES.

On the same day the court here made and passed an order granting leave to the defendants to file a supplemental answer in the words and of the tenor following, to wit:

Order.

GOODING'S ADM'R
vs.
OLIVER'S EX'RS.

The petition of the defendants for leave to file a supplemental answer having been considered after notice thereof to the complainant's solicitor, and argument on both sides, it is thereupon, this fifth day of May, 1855, ordered that the defendants have leave to put in a supplemental answer as prayed, provided the same be filed on or before the 1st Monday in June next.

R. B. TANEY,
WILLIAM F. GILES.

Afterwards, to wit, on the fourth day of June, in the year of our Lord one thousand eight hundred and fifty-five, the defendants, by their solicitors aforesaid, filed in the circuit court here their supplemental answer to the original bill in the words and of the tenor following, to wit:

Supplemental Answer.

GOODING'S ADM'R
vs.
OLIVER'S EX'RS.

To the honorable the Judges of the Circuit Court of the United States for the Maryland district, sitting in equity.

The supplemental answer in this cause of Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, exhibited by leave of the court for that purpose heretofore granted.

These respondents say that on the 22d March, 1825, a power of attorney for the recovery from Mexico of the claim of the Mexican Company of Baltimore, was executed to their testator by the several persons interested in, or then representing said claim, and they herewith file a copy thereof, which is to the best of their knowledge, information and belief, a true one, and if necessary will endeavor to produce the original thereof, which is not, and never has been, in their possession, and which they believe was sent by their said testator to his sub-attorneys, Messrs. Mason and Smith, in the city of Mexico, and is probably either there in the archives of the legation of the United States, or in those of the government of Mexico, or in the Department of State of the United States.

That their said testator accepted said power, and in the execution of it, appointed John Mason, junior, then secretary of legation in Mexico, and Dennis A. Smith, his sub-attorneys, and kept up with them and the Honorable Mr. Poinsett, the American minister, and others, a constant correspondence, extending over a series of years, in regard to the recovery of said claim. That the said Smith and Poinsett are dead, but that John Mason, junior, is still alive, and resident in the District of Columbia.

That their said testator kept copies of the letters, or some of them, so written by him, in his letter-book, and that the originals of the letters aforesaid written to official characters may possibly be in the archives of the American legation in the city of Mexico.

That, besides writing said letters, their said testator received many from his said sub-attorneys, and other persons, on the subject of the prosecution of said claim, some of which are in their possession, and ready to be produced and proved when required.

That their said testator diligently prosecuted said claim from 1825 until his death, in 1834, by himself and his sub-attorneys, and rendered every service which was possible for any one residing out of Mexico to render in its prosecution, and they believe and charge that his unceasing efforts to obtain its payment from the Mexican government contributed materially to the obtention of the relief finally afforded by means of the convention of 1839 between Mexico and this country.

That they believe, and therefore charge, that the said John Gooding was living in the State during the whole period from 1825 to 1834, and afterwards, but that he never took any part in the efforts made for the

recovery of said claim, or gave any assistance thereto, and that the same was wholly abandoned by him, and that he considered himself as having passed the same to his trustee in insolvency, and that he did so pass it as far as practicable by law, and that he looked upon his said trustee as invested with the property in his share of said claim, and full control over the same, as far as regarded its collection and receipt.

That after the death of their said testator, his executors in continuation of his efforts, and fully cognizant of the authority aforesaid given him, labored both personally and through agents, by correspondence and otherwise, to obtain payment of said claim.

That, with the exception, as they believe, of Mr. Dennis A. Smith and Mr. Lyde Goodwin, none of the parties interested in the claim aforesaid on Mexico took any part in its prosecution from the year 1825, and that (with the said exceptions) the prosecution thereof was wholly carried on as aforesaid, by their said testator and themselves; and they verily believe and charge, that but for the attention paid thereto by their said testator and themselves, the said claim would not only not have been recovered, but would have been ever presented within the time required by the convention, and so with the evidence thereof would have been wholly lost by laches to every one concerned.

That the utmost that could be realized for a ninth of said claim in in 1825, was the sum of $2,000; that it ultimately became of the value of upwards of $40,000, and they believe and charge that such increase of value was mainly due to the untiring efforts and expenditures of their testator, and to their own continuation thereof after his death; and in view of the facts hereinbefore set forth, these respondents claim such allowance for the services aforesaid as they shall prove under the circumstances of the case to be a fair compensation therefor.

And these respondents further say, that the suit on the equity side of Baltimore county court, mentioned in their original answer, in which a distribution was made of the award on the Mena claim or claim of the Mexican Company of Baltimore, was instituted on the 4th October, A. D. 1841, and on the same day the said court passed an order directing notice by advertisements in certain public papers to be given to all persons interested in the claim of the Mexican Company of Baltimore on the government of Mexico, to present their vouchers, properly authenticated, to the auditor appointed by said court, on or before the first day of February, 1842, and that subsequently to the passage of said order, to wit, on the 29th January, 1842, and before any claim was presented to said court on behalf of the respondents, Nathaniel Williams, esquire, as permanent trustee of John Gooding, the complainant's intestate, filed his petition in said court, asserting his title as such trustee to the interest of John Gooding in the claim of the Mexican Company of Baltimore on the government of Mexico, and that the said Nathaniel Williams made these respondents, and their deceased co-executor, Thos. Oliver, parties defendant to said petition, and called upon them to answer the same, and that they did answer said petition as they were bound to do, and in and by their said answer did deny and contest the

title set up in said petition by said Williams, as permanent trustee of the complainant's intestate, to the share of said John Gooding in the claim of the Mexican Company of Baltimore upon the government of Mexico, and that they employed counsel to file their said answer, and that upon argument of counsel on both sides the said court decided and decreed against the title so set up as aforesaid in said petition, and that thereupon the said Nathaniel Williams appealed from said decision and decree to the court of appeals of the western shore of Maryland; and that upon said appeal the counsel of these respondents, as well as the counsel of said petitioner, were heard, and that the said court of appeals affirmed the decision and decree below, denying the title set up by said Nathaniel Williams as trustee as aforesaid, and that thereupon the said Nathaniel Williams sued out a writ of error for the purpose of reviewing and reversing the said decision and decree of the court of appeals aforesaid, in the Supreme Court of the United States, and that a motion to dismiss said writ of error was made in said Supreme Court by the counsel of these respondents, and was there argued by them, and by the counsel of the said petitioner, and that on said motion the said writ of error was *was* dismissed, and these respondents were obliged to pay large sums of money to their said counsel for their services in resisting in the said several courts the title set up by the said petitioner in said petition, all which they are ready to prove as this court may direct.

And these respondents further say, that they are advised and believe, that in default of the resistance by them made to the title set up by the said petitioner in his said petition, the said petitioner would have recovered the share of the complainant's intestate in the Mexican Company's claim aforesaid; and the said complainant, who never intervened in the said . , would have been wholly barred to recovery thereof; and that the resistance so made has inured to the benefit of the complainant; and that the necessary expenses incurred as aforesaid in such resistance form a fair and valid claim in equity against the said complainant, who, and who only, has reaped the advantage thereof; and that the same ought to be allowed to these respondents against said complainant, and they claim the same accordingly.

And these respondents further say, that the said John Gooding, on the 9th November, 1829, made application in writing to the commissioners of insolvent debtors, of the city and county of Baltimore, for the benefit of the insolvent laws of Maryland; and that on such application, John Barney and Charles F. Mayer were duly appointed and qualified as his permanent trustees; and that on the third day of April, 1855, the said John Barney and Charles F. Mayer filed their bill in equity in the circuit court of the State of Maryland for Baltimore county, asserting their title to the share of said Gooding in the claim of the Mexican Company, of Baltimore, upon Mexico; and that in and by said bill these respondents and the complainant in this cause are made

parties defendant thereto; and that said bill is now pending, and is for the same fund which is claimed by the complainant in the present proceeding.

REVERDY JOHNSON,
J. MASON CAMPBELL,
Def'dts' Solic'rs.

STATE OF NEW YORK,
City of New York, to wit:

Be it remembered, and it is hereby certified, that on this thirty-first day of May, A. D. 1855, before me, the subscriber, a commissioner appointed by the circuit court of the United States in and for the second circuit and southern district of New York, to take affidavits, &c., personally appeared Robert M. Gibbes, esquire, and made oath on the Holy Evangely of Almighty God, that the matters and things stated in the foregoing answer are true, to the best of his knowledge and belief.

In witness of which, I have hereto set my hand and seal at
[SEAL.] said city, on the day and year above written.

GEO. W. MORTON,
U. S. Com., Southern Dis't N. York.

UNITED STATES OF AMERICA,
Southern District of New York, to wit:

I, John W. Nelson, clerk of the circuit court of the United States for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of George W. Morton, whose name is subscribed to the foregoing jurat, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner duly appointed under and by virtue of the acts of Congress in such case made and provided by the circuit court of the United States for the southern district of New York.

In witness whereof, I have hereto subscribed my name and
[SEAL.] affixed the seal of said circuit court this thirty-first day of May, A. D. 1855.

JOHN W. NELSON, *Clerk.*

Afterwards, to wit, on the fifth day of June, in the year of our Lord one thousand eight hundred and fifty-five, the complainant, by his solicitors aforesaid, filed in the circuit court here a petition in the words and of the tenor following, to wit:

Petition of Complainant.

Circuit Court of the United States for the district of Maryland.

JOHN GOODING, adm'r d. b. n. of John Gooding,
vs.
ROBERT M. GIBBES and CHARLES OLIVER, surv'g ex'ors of Robert Oliver.

To the honorable Roger B. Taney and William F. Giles, Judges of the said court.

The petition of said John Gooding respectfully states to your honors, that by the decision of the Supreme Court of the United States he is entitled to the funds sued for in the above cause; that the said funds consisted, on the eleventh day of April, eighteen hundred and fifty, of the following stocks and sums of money, to wit:

$3,998 55 of United States 5 per cent. loan - -	$3,998 55
32,093 03 of United States 6 per cent. loan - -	32,264 24
In money - - - - - - - - -	3,045 64

As will appear by the proceedings in this case.

That, on the day last aforesaid, said executors of Robert Oliver received all said stocks and money; since when, there has been a large increase thereof in dividends and interest, and interest upon dividends, and reinvestments. To all which said executors have and claim no title, though your petitioner believes that, whilst said executors claim no title to or in said sums, yet they pretend there is some demand or claim for services rendered, on account of which they ought to receive compensation out of a part thereof, but to what amount they have not said, nor does your petitioner know, although he avers that said executors ought to have stated, and ought now to state precisely what they do claim of said stocks and money, forthwith to deliver and pay over the remainder and balance thereof to your petitioner, and to bring into court that part so claimed by them, subject to the future order and disposition of this court.

Wherefore your petitioner prays and moves the court here, that, according to the practice of courts of equity in such cases, an order may be passed directing the said executors forthwith to deliver over to your petitioner all the stock and money aforesaid, not claimed by them for their compensation as aforesaid, and to bring into this court all the said stocks or the certificates thereof and so claimed by them for their compensation, to await the decision of this court on said claim and sums of money, with all the increase and accumulations, to be subject to the future order and disposition of this honorable court; and that said executors state forthwith the amount of their claim, and for such other and further relief as his case may require; and, as in duty bound, he will ever pray, &c.

G. L. DULANY,
Sol'or for Pet'r.

Ordered, this 9th day of June, 1855, that the foregoing petition be set down for hearing on the first Monday in November next.

WILLIAM F. GILES.

On the same day, the complainant, by his solicitor aforesaid, filed in the circuit court here a general replication, in the words and of the tenor following, to wit:

Replication.

Circuit Court of the United States.

JOHN GOODING'S ADM'R d. b. n.
vs.
ROBERT OLIVER'S EX'RS. } In Equity.

The replication of John Gooding, jr., administrator d. b. n. of John Gooding, deceased, complainant, to the joint and several amended answer of Charles Oliver and Robert M. Gibbes, executors of Robert Oliver, defendants, to the bill of complaint of the above complainant. This respondent, saving to himself all manner of exception to the errors and insufficiencies of said answer, for replication thereunto, says that he will aver and prove his said bill to be true and sufficient in law to be answered unto; and the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this respondent. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

G. L. DULANY,
Sol'or for Compl'ts.

And on the same day, the circuit court here made and passed the following order of reference, to wit:

Order of Reference.

In the Circuit Court of the United States for the district of Maryland.

GOODING'S ADM'R
vs.
OLIVER'S EX'RS.

This cause having been regularly set for hearing upon the bill, answers, replication and evidence, and having been argued by counsel, the court, upon consideration thereof, does order and decree that this cause be referred to the Master, to state the accounts between the parties from the pleadings and evidence, preparatory to a final decree in the cause; and that the Master do make such special reports or alternate statements as either party may require. And it is further ordered, that Levin Gale do take the accounts above ordered, and report to the next term of this court.

WILLIAM F. GILES.

Afterwards, to wit, on the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-six, comes into the cir-

cuit court here, Grafton L. Dulany, esquire, solicitor of the complainant, and suggests to the court here that, since the last continuance of this cause and before this day, the said John Gooding, junior, departed this life; and the said Grafton L Dulany, esquire, solicitor as aforesaid, filed in the circuit court here a bill of revivor, in the words and of the tenor following, to wit:

Bill of Revivor.

Circuit Court of the United States, sitting in equity.

JOHN GOODING, JR., adm'r d. b. n. of John Gooding,
vs.
CHARLES OLIVER and ROBERT M. GIBBES, Ex'rs of Robert Oliver.

To the honorable the Judges of the Circuit Court of the United States in and for the fourth circuit and Maryland district:

The bill of revivor of Isaac R. Gooding, administrator de bonis non of John Gooding the elder, a citizen of the State of Virginia, humbly shows: That heretofore the said John Gooding, jr., filed in this honorable court, in the above cause, his bill of complaint, to recover from the said executors of the said Oliver the proceeds of a certain claim against them, on account of money and stocks, or other property which they had got in their hands, belonging to him as administrator aforesaid, for and on account of a one-ninth share of a certain claim of the Baltimore Mexican Company against the Republic of Mexico. That to this bill an answer was filed by said executors, and a replication thereto by the then complainant. That under the issues thus made, depositions or evidence was taken and returned, when the said cause was heard, and the bill dismissed, with costs, by a decree of this honorable court, on the third day of December, A. D. 1853. That from this decree an appeal was prayed to the Supreme Court of the United States, which at its December session, A. D. 1854, reversed the said decree, and, by its order, remanded the cause to this honorable court for further proceedings to be had therein, in its accordance with its opinion. That since the cause has been brought back, according to said order, the said executors have, by permission of your honors, filed an amended answer, and the whole proceedings have been, by another order of your honors, referred to a master in chancery for his report.

Your orator furthes states, that the said John Gooding has departed this life, and that, since his death, letters of administration d. b. n. have been granted to your orator, in due form of law, by the orphans' court of Baltimore city, upon the remaining estate of the said John Gooding unadministered, as will appear by a certificate of the register of wills of said city, filed herewith as part of this bill, marked Complainant's Exhibit A.

That your orator is advised that he is entitled to have said suit, abated by the death of the said John Gooding, junior, revived as against the said Charles Oliver and Robert M. Gibbes, executors aforesaid, and put in the same condition as at the decease of the said complainant, John Gooding, junior. To the end, therefore, that the said suit and the proceedings therein may stand revived against the said defendants, and be in the same plight as at the time of the said abatement, and that the said executors of said Oliver may show cause, if any they have, why said suit should not be revived, may it please your honors to grant to your orator a subpœna against said Charles Oliver and Robert M. Gibbes, executors of Robert Oliver, deceased, to show cause, if any they have, why said suit should not be revived, &c., &c., &c.

G. L. DULANY,
H. WINTER DAVIS,
Sol'ors for Compl't.

Complainant's Exhibit A.

THE STATE OF MARYLAND, *Baltimore City, sc:*

The subscriber, register of wills for Baltimore city, *do* hereby certify, that it appears by the records of his office, that letters of administration de bonis non of all the goods, chattels, credits and personal estate of John Gooding, deceased, was, on the third day of April, in the year of our Lord one thousand eight hundred and fifty-six, granted and committed unto Isaac R. Gooding, who was then and there appointed administrator de bonis non of the said deceased.

In testimony whereof, I hereunto subscribe my name and affix the [SEAL.] seal of my office this twenty-fourth day of April, in the year of our Lord eighteen hundred and fifty-six.

N. HICKMAN,
Register of Wills for Baltimore City.

THE STATE OF MARYLAND.

I, Edward D. Kemp, presiding judge of the orphans' court of Baltimore city, in the State aforesaid, do certify that the aforegoing attestation of N. Hickman, register of wills for said city, is in due form and by the proper officer.

Given from under my hand, at the city of Baltimore, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-six.

E. D. KEMP.

STATE OF MARYLAND, *Baltimore City, ss:*

I hereby certify that the honorable D. Kemp, by whom the above certificate was given, and who hath thereto subscribed his name, was

at the time of so doing chief judge of the orphans' court of Baltimore city, in the State of Maryland, duly elected, commissioned, and sworn.

In testimony whereof I hereunto subscribe my name and affix the [SEAL.] seal of my office, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-six.

Test: N. HICKMAN,
Register of Wills for Baltimore city.

Whereupon, on the same day, the writ of the United States of America of subpœna was issued, in the words and of the tenor following, to wit:

Subpœna.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

[SEAL.] To Charles Oliver and Robert M. Gibbes, executors of Robert Oliver, deceased, greeting:

You are hereby commanded, that, all excuses and delays set aside, you be and appear *fore* the circuit court of the United States for the fourth circuit, in and for the Maryland district, at the United States court-room, in the city of Baltimore, on the first Monday in May next, to answer unto the bill of revivor of Isaac R. Gooding, administrator d. b. n. of John Gooding the elder, a citizen of the State of Virginia, in the said court exhibited against you; hereof you are not fail, as you will answer the contrary at your peril.

Witness the honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-five.

THO. SPICER, *Cl'k Circ't C.*

G. L. D. Issued 24th April, 1855.

Marshal's Return.

Summoned J. M. Campbell and David M. Perine, April 25, 1856.
J. W. WATKINS, *U. S. Marshal.*

On the same day the said Isaac R. Gooding, by G. L. Dulany, his solicitor, filed in the circuit court here the following order:

Order.

Circuit Court of the United States for the district of Maryland.

ISAAC R. GOODING, Adm'r d. b. n. of John Gooding,
vs.
CHARLES OLIVER and ROBERT M. GIBBES, Ex'rs of Robert Oliver.

Mr. SPICER: Having assigned and transferred to G. L. Dulany one-half of whatever may be recovered in the above case, you will there-

fore please enter the same, and the one-half of any decree that has or may be passed therein, to his use.

ISAAC R. GOODING,
Adm'r d. b. n. of John Gooding.

Witness—
HENRY R. DULANY.

MR. SPICER: Please to enter the judgment in the above case to my use, according to the terms of the above order.

G. L. DULANY,
Solic'r for Compl't.

Afterwards, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and fifty-six, the Master in chancery heretofore appointed by the order of the circuit court here filed his report, accounts, proceedings, in form following, to wit:

Agreement.

It is agreed that this book may be sent as part of the record in the above case by the clerk, without being copied again by him.

G. L. DULANY,
Solic'r for Appellant.
J. M. CAMPBELL,
For Defd'ts.

Agreement.

In the Circuit Court of the United States for the district of Maryland.

GOODING'S ADM'R d. b. n.
vs.
OLIVER'S EX'RS.

It is hereby agreed that Levin Gale, the Master appointed in the above cause, may return a printed statement of the evidence and proceedings before him, to have like effect as if the original evidence duly signed by the witness was returned. It is also agreed that the several exhibits and papers produced may be filed and returned by the Master in either case, and may be used as if produced and filed in both cases.

G. L. DULANY,
Solc'r for Compl't.
R. JOHNSON,
J. M. CAMPBELL,
Def'ts' Solc'rs.

Afterwards, to wit, on the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and fifty-six, the said Grafton L. Dulany, esq., solicitor for the complainant, filed in the circuit court here a second bill of revivor in the words and of the tenor following, to wit:

2d Bill of Revivor.

In the Circuit Court of the United States.

JOHN GOODING, Adm'r d. b. n. of John Gooding,
vs.
CHARLES OLIVER and ROBERT M. GIBBES, Ex'rs of Robert Oliver.
} In Equity.

To the honorable the Judges of the Circuit Court of the United States in and for the fourth circuit and Maryland district:

The bill in the nature of a bill of revivor of William Pinkney Whyte, a citizen of the State of Maryland, and administrator de bonis non of John Gooding the elder, late of the city of Baltimore, deceased, humbly shows, that heretofore the said John Gooding, administrator de bonis non of John Gooding the elder, filed his bill of complaint in this honorable court in the above cause, to recover from said executors of said Oliver the proceeds of a certain claim against them on account of money and stocks, which they had got in their hands, belonging to him as administrator aforesaid, for and on account of one ninth share of a certain claim of the Baltimore Mexican Company against the republic of Mexico. That to this bill an answer was filed by said executors, and a replication thereto by the then complainant. That under the issues thus made depositions and evidence was taken and returned when the said cause was heard, and the bill dismissed with costs, by a decree of this honorable court, on the 3d day of December, A. D. 1853.

That from this decree an appeal was prayed to the Supreme Court of the United States, which, at its December session, A. D. 1854, reversed the said decree, and by its order demanded the cause to this honorable court for further proceedings to be had therein in accordance with its opinion; that since the cause has come back, according to said order, the said executors have, by permission of your honors, filed an amended answer, and the whole proceedings have been, by another order of your honors, referred to a Master in chancery for his report; that, whilst the cause was pending before the Master, the said John Gooding, the complainant, departed this life in the month of March, A. D. 1856.

That since the death of the said John Gooding, letters of administration d. b. n. were, by the orphans' court of the city of Baltimore *city*, duly granted to a certain Isaac R. Gooding upon the estate of the said John Gooding the elder, remaining unadministered; that the said Isaac R. Gooding, in his character of administrator d. b. n., filed in this court his bill of revivor against the said executors, upon which a subpœna was issued against the said executors, and returned served upon J. M. Campbell and David M. Perine, who, as your orator avers, were the solicitor and agent of the said executors in relation to the subject-matter of the said suit.

That since then the letters of administration d. b. n., so as aforesaid

granted to the said Isaac R. Gooding, have been revoked by the said orphans' court, on the sixteenth day of May, A. D. 1856, and on the same day letters of administration d. b. n. were, by the same orphans' court, granted to your orator in due form of law on the estate of the said John Gooding the elder, yet unadministered, and that your orator has given bond with security for the faithful performance of his duties as such administrator d. b. n., duly approved by said court. In proof whereof your orator begs leave to file herewith a certified copy of his appointment, marked Complainants' Exhibit "W. P. W." as part of this bill. Your orator further states, that Charles Oliver and Robert M. Gibbes are citizens of the State of New York, and were so at the filing of the original bill in this cause, and so have been ever since. That your orator is advised that he is entitled to have said suit so as aforesaid abated by the death of the said John Gooding, junior, revived as against the said Charles Oliver and Robert M. Gibbes, executors as aforesaid, and put in the same condition as at the decease of the said complainant, John Gooding. To the end, therefore, that the said suit, and the proceedings therein, may stand revived against the said defendants, and be in the same plight as at the time of said abatement, and that the said executors of said Oliver may show cause, if any they have, why said suit should not be revived, may it please your honors to grant to your orator a subpœna against said Charles Oliver and Robert M. Gibbes, surviving executors of said Robert Oliver, deceased, to show cause, if any they have, why said suit should not be revived, &c., &c.

G. L. DULANY,
H. WINTER DAVIS,
Sol'crs for Compl't.

Complainant's Exhibit "W. P. W."

MARYLAND, *sct:*

The State of Maryland, to all persons to whom these presents shall come, greeting:

Whereas letters of administration de bonis non were heretofore granted unto Isaac R. Gooding, on the estate of John Gooding, deceased; and whereas the orphans' court for Baltimore city has since revoked the said letters of administration de bonis non, so granted to the said Isaac R. Gooding, on the estate of the said deceased, and the estate of the said deceased hath not yet been fully administered, as it is said: Now know ye, that administration of all the goods, chattels, and credits, not already administered, of the said John Gooding, deceased, is hereby granted and committed unto William Pinkney Whyte, who is appointed administrator de bonis non of the said deceased.

Witness E. D. Kemp, esquire, chief judge of the orphans' court of Baltimore city, this sixteenth day of May, in the year of our [SEAL.] Lord eighteen hundred and fifty-six.

N. HICKMAN,
Register of Wills for Baltimore city.

THE STATE OF MARYLAND.

I, Edward D. Kemp, presiding judge of the orphans' court for Baltimore city, in the State aforesaid, do certify that the aforegoing attestation of N. Hickman, register of wills for said city, is in due form and by the proper officer. Given from under my hand at the city of Baltimore this nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-six.

E. D. KEMP.

STATE OF MARYLAND, *Baltimore City, sc:*

I hereby certify that the Honorable Edward D. Kemp, by whom the above certificate was given, and who has thereto subscribed his name, was at the time of so doing chief judge of the orphans' court for Baltimore city, in the State of Maryland, duly elected, commissioned and sworn.

In testimony whereof I hereunto subscribe my name and affix the [SEAL.] seal of my office, this nineteenth day of May, in the year of our Lord eighteen hundred and fifty-six.

Test: N. HICKMAN,
Register of Wills for Baltimore city.

Whereupon the writ of the United States of America of subpœna was issued, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To Charles Oliver and Robert M. Gibbes, executors of the last will [SEAL.] and testament of Robert Oliver, deceased, citizens of the State of New York, greeting:

You and each of you are hereby commanded, that, all excuses and delays set aside, you be and appear at the clerk's office of the circuit court of the United States for the fourth circuit, in and for the Maryland district, at the United States court-room, in the city of Baltimore, on the first Monday in July next, to answer unto the bill of complaint of William Pinkney Whyte, a citizen of the State of Maryland, administrator de bonis non of John Gooding the elder, late of the city of Baltimore, deceased, in the said court exhibited against you. Hereof you are not to fail, as you will answer the contrary at your peril.

Witness the honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-five.

THO. SPICER,
Clerk Circuit Court.

G. L. D. Issued 8th June, 1856.

Marshal's Return.

Served, ¼ past 11 o'clock, on Reverdy Johnson, J. Mason Campbell, and David M. Perine, esqrs., 7th June, 1856.

J. W. WATKINS,
U. S. Marshal.

On the same day the said William Pinkney Whyte, administrator de bonis non of the said John Gooding the elder, by Grafton L. Dulany, his solicitor, filed in the circuit court here a petition, in the words following, to wit:

Petition of Wm. Pinkney Whyte.

Circuit Court of the United States for the Maryland district.

JOHN GOODING, jun'r, adm'r d. b. n. of John Gooding,
vs.
CHARLES OLIVER and ROBERT M. GIBBES, ex'rs of Robert Oliver.

To the honorable the Judges of the said Circuit Court.

The petition of William Pinkney Whyte, administrator d. b. n. of said John Gooding, respectfully states, that he has filed in the above cause his bill of revivor against said executors, as will appear by reference to the proceedings therein. The process of subpœna against said executors, Charles Oliver and Robert M. Gibbes, is about to be issued, in pursuance of the prayer of said bill; but that said Charles Oliver and Robert M. Gibbes are both citizens of the State of New York, and not now in the State of Maryland, wherefore no subpœna can be personally served upon them by the marshal of said district. That your petitioner is informed and believes that said executors, before they left the State of Maryland, having once been citizens and residents thereof, employed the Honorable Reverdy Johnson as their attorney and legal agent in all suits and legal business affecting the estate of their deceased testator, with full authority to act therein as such attorney; that, as counsellor and solicitor, he has acted with James Mason Campbell from the filing of the original bill in this cause to the of the death of the said John Gooding, and that both said solicitors waived the personal service of a subpœna to said bill upon said executors, acting for them, and without such service, appeared to and answered said bill on behalf of said executors, and continued to defend said suit, and are now, as your petitioner believes, empowered, if they choose so to do, by said executors to appear to said bill of revivor, and continue the defence of said suit when revived. That the suit of John S. Williams, administrator of James Williams, is exactly like this suit in its object and demands; and that said solicitors have, from the original bill filed therein to the present time, and now are, acting as the counsel and solicitors of said executors therein, as will appear by reference to the proceedings in said cause now on the docket of this honorable court.

That David M. Perine, of this city, has always acted as the agent in fact of said executors, in regard to the affairs of the said executors, and especially in regard to suits against the same, and most especially in regard to what has been commonly called the Mexican cases, of which the present cause and that of John S. Williams against said executors are among the number. That your petitioner is informed that

said Perine has under his care and present custody the money and stocks which the said suit was brought to recover, and has been actively engaged in assisting in the defence of the same, by his advice and information, by attending to getting of witnesses and paying the cost of their attendance, and in every way in which he can subserve the interest of said executors in their defence to said suit, as well as that of John S. Williams, as aforesaid.

That said Perine has, for many years, been the general agent of said executors in all affairs of said deceased's estate; in the course of which agency he has caused appearance to be entered for said executors in suits brought against them, and employed lawyers to defend the same, and made contracts for their services, and paid their fees, and, in general, attended to all the concerns of said estate for said executors, so far as the same were unsettled and needed attention.

Your petitioner *petitioner* further states that, by reason of the absence of said Charles Oliver and Robert M. Gibbes out of the State of Maryland, the marshal of the said district cannot personally serve a subpœna upon them; and your petitioner will, in his said suit, remain without redress unless, by the order of this court, the said subpœna is directed to be served upon the said counsel and solicitors and agent in fact, or either of them.

Whereupon your petitioner prays, that the said subpœna, issued or to be issued as aforesaid, may, by order of this court, be directed to be served upon the said Reverdy Johnson, James M. Campbell and David M. Perine, or any one or two of them, as counsel and agents of said executors, and that when so served, it be decreed or ordered to be good service thereof upon said executors; and for further relief in the premises, and as in duty bound, &c.

G. L. DULANY,
Solic'r for Pet'r.

Sworn to in open court, this 26th May, 1856.
THO. SPICER, *Cl'k.*

Afterwards, to wit, on the seventh day of June, in the year of our Lord one thousand eight hundred and fifty-six, the court here made and passed the following order, to wit:

Order of Court.

Circuit Court of the United States for the Maryland district.

JOHN GOODING, jun'r, adm'r d. b. n. of John Gooding,
vs.
CHARLES OLIVER and ROBERT M. GIBBES, ex'rs of Robert Oliver.

In the matter of the bill in the nature of a bill of revivor of William Pinkney Whyte, administrator d. b. n. of John Gooding, filed in the above cause, it is this seventh day of June, 1856, ordered that the ser-

vice of subpœna as prayed for by petition in the nature of said bill of revivor be made upon the said Reverdy Johnson, J. Mason Campbell, and David M. Perine, and that the service upon them shall be deemed and taken to be good service upon the said executors of Robert Oliver.

WILLIAM F. GILES.

On the same day the defendants, by their solicitors aforesaid, filed in the circuit court here their exceptions to the Master's report in the words following, to wit:

Defendant's Exceptions to the Master's Report.

GOODING'S ADM'R d. b. n.
vs.
OLIVER'S EXECUTORS.

The defendants in this cause except to the Master's report and to the account A returned by him, with his said report, upon the following grounds:

1. That the said report and account disallows the fees and other expenses paid by the executors of Robert Oliver on account of John Gooding's share in resisting the claim of the permanent trustee of said John Gooding as an insolvent debtor to said share, and which fees and other expenses, and the amount thereof, are shown by the evidence of D. M. Perine, esquire, a witness for the complainant, taken before and returned by the Master.

2. That the said report charges the defendants with the 10 per cent. on the amount of John Gooding's share, shown in the proof to have been received from the trustees, Glenn and Perine, by the Hon'bl Reverdy Johnson, esq.

3. That the said report wholly disallows any compensation to the defendants on account of the services of their intestate and themselves, rendered in the recovery of said *said* share as shown in the proof.

4. That the report and account charge the defendants with the whole of the share of John Gooding, three-eighths of the same having been admitted, by agreement, to have been distributed and paid over before any claim to the same made by the complainant in this case.

5. That the report and account charge the defendants with the specific moneys, and interest thereon, and stocks and the dividends thereon, received from the trustees, Glenn and Perine, on account of said Gooding's share, as their specific property; whereas they were, as executors of Robert Oliver, only chargeable with the amount of any claim they might have against said estate, to the extent of any assets which they might be proved to have had in hand at the time of bill filed.

6. That said report and account allows the share of said John Gooding, and the whole and every part thereof, to the complainant, as money and property belonging to the complainant, and received by the defendants in trust for the complainant; whereas it appears by the proof

that the said share was not received upon any trust for the complainant, and the complainant, if he had any right or title to the same, had adequate remedy at law therefor.

REVERDY JOHNSON,
J. M. CAMPBELL,
Sol'rs for Exceptants.

Afterwards, to wit, on the sixteenth day of June, in the year of our Lord one thousand eight hundred and fifty-six, the complainant, by his solicitor aforesaid, filed in the circuit court here his exceptions to the Master's report, in the words following, to wit:

Complainant's Exception to the Master's Report.

Circuit Court of the United States.

WM. P. WHYTE, adm'r d. b. n. of John Gooding,
vs.
GIBBES & OLIVER, ex'rs of Robert Oliver.

The complainant in the above cause excepts to the Master's report, and to the account A therewith filed.

Because, in and by said report and account A, the defendants are not charged with compound interest from the respective times they wrongfully received and treated the money and dividends in stocks as their own, as stated in said account, nor at any other times, but with simple interest only.

G. L. DULANY,
H. W. DAVIS,
Solic'rs for Compl't.

Afterwards, to wit, on the twenty-third day of June, in the year of our Lord one thousand eight hundred and fifty-six, the defendants, by their solicitors aforesaid, filed in the circuit court here their answer to the bill of revivor, in the words following, to wit:

Answer to the Bill of Revivor.

To the honorable the Judges of the Circuit Court of the United States for the district of Maryland, in equity.

The answer of Robert M. Gibbes and Charles Oliver to the bill, in the nature of a bill of revivor, lately filed against them in this court by William Pinkney Whyte, administrator de bonis non of John Gooding, deceased.

These respondents protesting that they have not been legally served with process on said bill, and that they do not appear voluntarily thereto, and are not bound in law to answer the same, yet, in obedience to the rules of this court, for answer thereto, they answer and say that they admit the death of John Gooding, administrator, by whom the original bill was filed, the subsequent grant of letters of administration

de bonis non on the estate of the original intestate to Isaac R. Gooding, and the revocation thereof, and the grant afterwards of letters of administration de bonis non on the estate of the original estate to the complainant, and that said Whyte is a citizen of the State of Maryland; but for cause why the original suit should not be revived as prayed, in and by said bill, in nature of a bill of revivor, they allege and say, that this court has no jurisdiction of the original bill, because, at the time the same was filed, the said John Gooding, administrator of John Gooding, was a citizen of the State of Virginia, and continued such to the time of his death, while these respondents, at the time the same was filed, were citizens of the State of New York, and have never, since the same was filed, been citizens of the State of Maryland.

REVERDY JOHNSON,
J. M. CAMPBELL,
For Defend'ts.

Admitted without oath.

G. L. DULANY,
Compl'ts Solic'r.

On the same day the parties aforesaid, by their solicitors aforesaid, filed in the circuit court here an affidavit and agreement in the words following, to wit:

Affidavit and Agreement.

In Circuit Court Baltimore County.

MAYER and BARNEY, Trustees,
vs.
JOHN GOODING, adm'r d. b. n. of Jno. Gooding and Oliver's Ex'rs.

STATE OF MARYLAND,
Baltimore County, to wit:

Personally appeared before the subscriber, a justice of the peace for said county, John Gooding, and made oath in due form of law that he is the same person mentioned in the above entitled cause, as the administrator of John Gooding, deceased, and that the subpœna issued thereon against him was served upon him by the sheriff of said county; and that he, the said John Gooding, is a citizen of the State of Virginia, and has resided in Richmond county, in said State, for the last four years, and always voted in said county. Sworn before the subscriber, a justice of the peace for the State and county aforesaid, this 18th day of May, 1855.

WALTER R. JONES.

Agreement.

It is agreed that the above deposition be read at the hearing of the

cases of adm'r of Williams, and the adm'r of John Gooding vs. Oliver's executors, in the circuit court of the United States for the Maryland district; to have the same effect as if said witness had been now examined in said cases.

G. L. DULANY,
Solc'r for Compl't.
REVERDY JOHNSON,
For Defd'ts.

Afterwards, to wit, on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifty-six, the court here made and passed the following order, to wit:

Order of Reference.

WHYTE, adm'r de bonis non of Gooding,
vs.
OLIVER'S EXECUTORS. } In Equity.

Ordered by the court, this 28th of June, 1856, that the account stated in this case by the Master, marked A, is overruled and set aside; and the Master will state a further account, charging the defendants with the money and dividends received by them, as shown in account B, heretofore stated by him. Also, with the United States six per cent. loan actually transferred to them, as shown by said account B.

He will then credit the defendants with the amount of the costs and fees paid by them, as shown on page 22 of the printed evidence returned by the Master with his report, down to, and inclusive of, the item charged March 13th, 1852, less the four items first charged in said account.

And he will further credit *credit* them with 35 per cent. on the amount of the said money and stocks so ascertained as compensation, to which said defendands are equitably entitled for the recovery of this fund.

WM. F. GILES.

2d Report.

In the Circuit Court of the United States for the fourth circuit, in and for the district of Maryland.

WILLIAM P. WHYTE, adm'r d. b. n. of John Gooding,
vs.
ROBERT M. GIBBES and CHARLES OLIVER, ex'rs of Robert Oliver.

To the honorable the Judges of the Circuit Court of the United States for the fourth circuit, in and for the district of Maryland.

The undersigned, special Master, to whom this cause was referred

back, respectfully reports, that, in obedience to the order of this court, he has stated the annexed account, marked L, charging and crediting as instructed in the order of the 28th June, 1856.

All of which is respectfully submitted. LEVIN GALE.

ACCOUNT L:

Being the account directed to be stated by the , by order dated 28th of June, 1856.

To amount of money and dividend received by the executors of Robert Oliver, as shown by account B -		$17,540 37
Deduct amount of costs and fees paid by the executors to 13 March, 1852 - - -	$2,775 73	
Less amount of first four items - - -	500 00	
		2,275 73
		$15,264 64
Deduct 35 per cent. thereof for compensation - -		5,337 14
		$9,922 02
To amount of six per cent. loan actually transferred to the executors of Oliver, as shown by account B -		$29,563 00
Deduct 35 per cent. thereof as compensation - -		10,347 05
		$19,215 95
To amount due by defendants to complainant in money		$9,922 02
To amount due by defendants to the complainant on certificates of United States 6 per cent. loan - - -		$19,215 95

3d Report.

In the Circuit Court of the United States for the fourth circuit in and for the Maryland district.

WM. P. WHYTE, adm'r d. b. n. of John Gooding,
vs.
ROBERT M. GIBBES and CHARLES OLIVER, ex'rs of Robert Oliver.

To the honorable the Judges of the Circuit Court of the United for the fourth circuit in and for the district of Maryland:

The undersigned, special Master, to whom this cause was referred back, respectfully reports, that, in obedience to the order of this court, he has stated the annexed account M, charging and crediting as is directed by the order of the 28th of June 1856, and charging the dividend received since said order was passed.

All of which is respectfully submitted.

LEVIN GALE.

July 2d, 1856.

ACCOUNT M:

Being the account directed to be stated by the court by the order of 28 June, 1856.

To amount of money and dividend received by the executors of Robert Oliver, as shown by account B -		$17,540 37
To dividend on 6 per cent. loan on 1 July, 1856 -		886 89
		$18,427 26
Deduct amount of costs and fees paid by executors up to 13 March, 1852 - - - -	$2,775 73	
Less amount of first four items - -	500 00	
		$2,275 73
		$16,151 53
Deduct 35 per cent. on $18,427 26 as compensation -		6,449 54
		9,701 99
To amount of 6 per cent. loan actually transferred to the executors of Oliver, as shown by account B - -		$29,563 00
Deduct 35 per cent. thereof as compensation - -		10,347 05
		19,215 95
To amount due by defendants to complainant in money,		$9,701 99
To amount due by defendants to complainants in certificates of United States 6 per cent. loan - -		19,215 95

On the second day of July, in the year of our Lord one thousand eight hundred and fifty-six, the circuit court here made and passed the following, to wit:

Order.

In Equity.—Circuit Court of the United States, April term, 1856.

JOHN GOODING'S ADM'R d. b. n.
vs.
OLIVER'S EXECUTORS.

Upon consideration of the *of the* bill in the nature of a bill of revivor, filed in the above cause by William Pickney Whyte, administrator of John Gooding the elder, the answer thereto, and the affidavit filed therewith, it is ordered that the said William P. Whyte be admitted as a party complainant in this cause, in the room and stead of said John Gooding, administrator d. b. n. of said John Gooding the elder, deceased, and that the said cause and the proceedings therein be revived and put in the same plight and condition in which they were at the death of said John Gooding, junior, and that said Whyte be allowed all benefit thereof in the further prosecution of this cause.

WILLIAM F. GILES.

And on the same day the court here made and passed a final decree, in the words and of the tenor following, to wit:

Final Decree.

WHYTE, adm'r d. b. n. of Gooding,
vs.
OLIVER'S EXECUTORS.

This cause coming on for final hearing upon the Master's report, this day filed, embodying the instructions heretofore given him by the court, the proceedings were read and considered and the solicitors of the parties heard. It is thereupon, this second day of July, A. D. 1856, by the circuit court of the United States for the Maryland district, in equity sitting, adjudged, ordered and decreed, that the defendants do pay to the complainant the sum of $9,701 99, (nine thousand seven hundred and one dollars and ninety-nine cents,) and also transfer to the complainant $19,215 95, nineteen thousand two hundred and fifteen dollars and ninety-five cents, of the United States 6 per cent. stock mentioned in the evidence and the Master's report, and also pay to the complainant his costs of suit, to be taxed by the clerk, including the sum of two hundred and fifty dollars, which is hereby allowed as compensation to Master Gale for his services rendered in this cause.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the parties aforesaid, by their solicitors aforesaid, in open court here, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next; and to them it is granted.

Thereupon, it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court; and the same are hereby transmitted accordingly.

Complainant's Appeal Bond.

Know all men by these presents, that we, William P. Whyte and Grafton L. Dulany, of the city of Baltimore, are held and firmly bound to Charles Oliver and Robert M. Gibbes, executors of Robert Oliver, deceased, in the sum of three hundred dollars, to be paid to the said Charles Oliver and Robert M. Gibbes, executors as asoresaid, or to their certain attorney, executors or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, this 7th day of January, A. D. 1857.

Whereas in a cause heretofore depending on the equity side of the circuit court of the United States for the Maryland district, between the said William P. Whyte, administrator de bonis non of John Gooding, and the said Charles Oliver and Robert M. Gibbes, executors of

said Robert Oliver, as defendants, it was, on the second day of July, A. D. 1856, adjudged, ordered and decreed, that the said defendants should pay to the complainant only the sum of nine thousand seven hundred and one dollars and ninety-nine cents; and also transfer to the complainant only nineteen thousand two hundred and fifteen dollars and ninety-five cents of United States six per cent. stock; and also pay to the complainant his costs of suit—from which decree the said complainant hath appealed to the Supreme Court of the United States:

Now, the condition of the above obligation is such that, if the said appellant shall not prosecute his appeal with effect, and in case said decree be affirmed by the Supreme Court of the United States, shall well and truly pay to said appellees all such costs as may be decreed to them by said court, then this obligation to be void, otherwise to be and remain in full force and virtue in law.

WM. PINKNEY WHYTE, [SEAL.]
GRAFTON L. DULANY. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN STEWART.

Approved 7th Jan'y, 1857.

WILLIAM F. *BOND.*

Defendant's Appeal Bond.

Know all men by these presents, that we, Robert M. Gibbes, Columbus O'Donnell and David M. Perine, are held and firmly bound unto William Pinkney White, administrator de bonis non of John Gooding, deceased, in the full and just sum of sixty-five thousand dollars, to be well and truly paid to the said William Pinkney Whyte, administrator as aforesaid, or to his certain attorney, executors, administrators and assigns; to which payment well and truly to be made and done, we hereby bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals this ninth day of July, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, in a cause heretofore depending on the equity side of the circuit court of the United States for the Maryland district, between the said William Pinkney Whyte, administrator as aforesaid, as complainant, and the said Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, deceased, as defendants, it was, on the second day of July, A. D. eighteen hundred and fifty-six, adjudged, ordered and decreed, that the said defendants do pay to the said complainant the sum of nine thousand seven hundred and one dollars and ninety-nine cents; and also transfer to the complainant nineteen thousand two hundred and fifteen dollars and ninety-five cents of United States six per cent. stock, and also pay to the said complainant his costs of suit; from which decree the said defendants have appealed to the

Supreme Court of the United States: Now, the condition of the foregoing obligation is such, that if the said appellants shall prosecute the said appeal with effect, and in case said decree be affirmed by the Supreme Court of the United States, shall well and truly in all things perform and fulfil said decree, then this obligation to be void, otherwise to be and remain in full force and virtue in law.

R. M. GIBBES, [SEAL.]
COLUMBUS O'DONNELL, [SEAL.]
D. M. PERINE. [SEAL.]

Signed, sealed, and delivered in the presence of—
THOS. W. JARVIS, as to R. M. Gibbes.
HENRY A. ROBINSON, as to C. O'Donnell and D. M. Perine.

Bond approved 14th July, 1856.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy, taken from the record and proceeding the circuit court aforesaid, I hereunto [L. S.] subscribe my name and affix the seal of the said circuit court, this seventh day of January, in the year of our Lord one thousand eight hundred and fifty-seven.

THOS. SPICER,
Cl'k Circ't Ct.

In the Circuit Court of the United States for the fourth circuit, in and for the district of Maryland.

JOHN GOODING'S ADM'R de bonis non
vs.
ROBERT M. GIBBES and CHARLES OLIVER, executors of Robert Oliver.

To the honorable the Judges of the Circuit Court of the United States for the fourth circuit, in and for the district of Maryland:

The undersigned, special Master, to whom the papers in the above cause were referred, respectfully reports:

That he gave notice to the respective parties and proceeded to take such evidence as was offered by either party, which evidence, together with a statement of all the proceedings before the Master, is herewith returned,—that from the papers in the cause, and from the evidence taken before the Master, he submits the following statement of facts, that is to say:

It appears that the board of commissioners under the convention of 1839, between the governments of the United States and Mexico, awarded a large fund to Glenn and Perine, in trust, for certain persons forming what was called the Mexican Company, or for whoever might be entitled thereto. The complainant's intestate was one of the original members of the Mexican Company, and held one-ninth interest in the same. This share the court of appeals of Maryland, in the case

of Thomas and White vs. Dennis A. Smith and others, awarded to the defendants as executors of Robert Oliver, and said share, together with the accumulations and profits derived from investments made by Glenn and Perine, the trustees, was paid off and transferred on the 11th of April, 1850, in the following manner, that is to say, in money $3,127, in United States five per cent. loan $4,097 74, and in United States six per cent. loan $32,847 77. Of these respective amounts in money and stock, nine-tenths were actually paid, transferred and delivered to the defendants, and the remaining tenth was paid, transferred and delivered to Reverdy Johnson, Esq., the counsel of the defendants. These payments and transfers were made by Glenn and Perine, the trustees, in pursuance of an attachment issued by the court of appeals at the instance of the defendants and the said Reverdy Johnson, to enforce the decree passed by the said court, awarding the share of the complainant's intestate to the defendants. One-tenth of which decree had been entered by the said Reverdy Johnson to his own use, in pursuance of an agreement between him and the defendants, by which he was to receive that per centage, in the event of succeeding in sustaining their claim to the fund in the case then pending.

On the 7th day of September, 1851, the defendants received from the government of the United States, on account of the share of the complainant's intestate in the Mexican Company, the further sum of $118 81 in money.

On the 29th day of December, 1851, the United States five per cent. loan was paid off by the government at par. The United States six per cent. loan does not appear to have been yet paid off, but is now outstanding, bearing interest at the rate of six per cent. per annum, payable semi-annually.

It also appears that the money and stocks which the defendants thus received, on account of the share of complainant's intestate, was paid, transferred and delivered on the 3d and 6th of January, 1852, by the defendants to Robert M. Gibbes, Charles Oliver, Allen Thomas and Columbus O'Donnell, the then trustees under the last will and testament of defendant's testator. It was, however, agreed between the parties to this cause, that five-eighths of the fund sued for should be considered as in the hands of the defendants.

It also appears that the defendants (besides the ten per cent. received by Mr. Johnson) paid various sums for counsel fees and other expenses incurred in asserting their right to the share of the complainant's intestate in the Mexican Company; which sums will be found particularly stated, and the objects for which they were paid, in the testimony of David M. Perine, set forth in the proceedings before the Master. They also paid divers sums in resisting the claim of the complainants in this cause. These last sums, as well as the objects for which they were expended, will also be found set forth in the testimony of Mr. Perine.

It also appears that Robert Oliver, the defendant's testator, in his lifetime used great exertions to obtain from the government of Mex-

ico a recognition of the claim of the Mexican Company, and endeavored for many years, and by various means, to obtain from the said government the payment of the money claimed to be due to said company; and that to promote these objects he employed various agents and carried on a correspondence with several persons. It also appears that the defendants, after the death of the said Robert Oliver, employed agents to have the said claim allowed by the board of commissioners, held under the before mentioned convention between the governments of the United States and Mexico. The said claim was recognised by the board of commissioners, and the fund now in controversy, in consequence, awarded to Glenn and Perine as trustees for whosoever might be entitled to the same.

Several witnesses were examined to prove the value of the services thus rendered by the said Robert Oliver and the defendants. Their testimony is, in substance, that in the opinion of the witnesses fifty per cent. of the amount recovered would be considered a reasonable compensation for such services as were performed by Oliver and the defendants, if performed by an agent employed for that purpose, such agent undertaking to pay his own expenses, and to receive no compensation, except in the event of success.

It further appears that the said Robert Oliver was not a member of the said Mexican Company, but that at the time of his using the exertions to procure the allowance and payment of the claim of the Mexican Company from the government of Mexico, he claimed to own the shares and interests of several members of said company, and that the defendants, as executors of the said Robert Oliver, did after his death also claim to own and hold the same shares and interests as his representatives, and so claimed when they prosecuted the claim of the Mexican Company before the board of commissioners. That among the shares and interests in the Mexican Company claimed by the said Robert Oliver in his lifetime, and by the defendants as his executors after his death, was the share now in controversy, and which, by the decree of the Supreme Court of the United States in this cause, has been adjudged to belong to the complainant as the representative of his intestate.

It further appears that Dennis A. Smith was one of the members of the Mexican Company, and holder of two shares thereof—that he assigned said shares to trustees for the benefit of his creditors, and that they agreed that he should retain one-half of the proceeds, provided he would proceed to Mexico, and attempt the recovery of the said claim; and it further appears that the said Dennis A. Smith subsequently assigned to Robert Oliver his remaining or half interest, and that the defendants, as executors of Robert Oliver, did receive the said interest of the said Dennis A. Smith in the proceedings in the aforesaid cause of Thomas and White vs. Dennis A. Smith and others. It further appears that Robert Oliver received a power of attorney, authorizing him to prosecute the claim of the Mexican Company, and to employ agents for that purpose, from various persons professing to be

members of the Mexican Company or assignees of the interest of members thereof; and among others, from a person who claimed to represent the complainant's intestate, as permanent trustee under the insolvent laws of Maryland, but whose right to represent the complainant's intestate has since been held to be invalid. But that it does not appear that either the said Robert Oliver or the defendants were ever authorized or employed by the complainant or the complainant's intestate to prosecute the said claim either against the government of Mexico or before the board of commissioners. It further appears that the executors of Robert Oliver became parties to the said cause of Thomas and White vs. Dennis A. Smith and others, and that in the proceedings in the said cause they claimed the share of the complainant's intestate in the said Mexican Company as belonging to them as the representatives of the said Robert Oliver, and that their claim was, in that cause, allowed, and the said share awarded to them. They also claimed the share and interest of Lyde Goodwin, and the one-half of the shares of Dennis A. Smith, and were allowed the same, and did receive and retain the funds awarded to them as holders of those shares and interests. It further appears that the defendants did in the said cause claim to be allowed, and were allowed, for various sums paid by the said Robert Oliver, and also for sums paid by themselves in and about the prosecution of the claim of the Mexican Company against Mexico and before the board of commissioners; but it does not appear that in that cause they claimed any amount as a compensation to the said Robert Oliver, or themselves, for the personal exertions of the said Robert Oliver, or themselves, in prosecuting the claim of the said Mexican Company.

On this state of facts the Master understands the defendants to contend, that they are liable to complainants for only five-eighths of the fund; and also that they are entitled to the following allowances or deductions, viz:

1. The sums paid by them for counsel fees, &c., in asserting their claim to their share of complainant's intestate in the case of Thomas and White vs. Dennis A. Smith and others.
2. The sums paid by them for counsel fees, &c., in defending this suit.
3. That they are not responsible for the ten per cent. received by R. Johnson, esquire.
4. To one-half of the fund as a compensation to the said Robert Oliver and themselves for services rendered in obtaining the fund.

All these claims have been disallowed by the Master. He has charged the defendants with the whole amount, and not with five-eighths only, because he understands the Supreme Court in its opinion to have decided that whatever distribution or disposition of the fund the executors may have made, such distribution or disposition not having been made under the sanction of a court authorized to direct the same, does not protect the defendants, and they are therefore to be treated as still in possession of the whole fund.

The Master has not allowed any deductions for sums expended by defendants in asserting their claim to the fund, as he cannot perceive any reason why the complainants should be chargeable with the same. Even if it were admitted that the defendants would have a meritorious demand for expenses incurred in prosecuting a claim against a fund they were not entitled to, and thereby accidentally preserving it for the complainant, the lawful owner, yet it does not appear that any such service was rendered in this case, inasmuch as it has been decided by the court that the complainant's rights could not have been affected by any determination made in that cause. Much less can the Master perceive any reason why the defendants should be entitled to an allowance for resisting the claim of the present complainants; on the contrary, he holds that the defendants are liable to the complainant for his costs incurred by him in this cause.

The Master has charged the defendants with the amount received by Reverdy Johnson, esq., their counsel, although the same does not appear to have actually come to their hands, because he deems the receipt of it by Mr. Johnson, under the circumstances, to have been the receipt of the defendants, it having been so received by virtue of a contract with the defendants for services performed for their benefit, and in pursuance of an order from their attorney, which they do not appear ever to have contested.

The Master has not allowed compensation for the services rendered by Robert Oliver and the defendants in prosecuting the claim of the Mexic n Company—1st. Because there is no evidence that Robert Oliver or the defendants were employed by the complainant's intestate, or by the complainant; and being themselves interested in the said fund, as assignees of Dennis A. Smith and Lyde Goodwin, their exertions, for the common benefit of themselves and the other parties interested in the Mexican Company, did not entitle them to compensation for their services, unless expressly stipulated for and agreed to. 2d. Because the said Robert Oliver, and the defendants, instead of prosecuting the same for or on account of the complainant's intestate, or the complainant, they did so claiming this share as their own, and being defeated in that purpose, can have no rightful claim against the party whom they sought to deprive of the fund. 3d. Because the services performed by the said Robert Oliver were services which he was bound to perform, in order to entitle him, or his executors, to receive the portion which the defendants did receive as assignees of Dennis A. Smith. 4th. Because, if entitled to any compensation at all, the claim was against the whole fund, and the defendants having been parties to the suit in which that fund was distributed, set up no claim for compensation, but only for expenses incurred, which were allowed and paid to them. 5th. Because, by the agreement of the parties to this cause, the accounts reported by the auditor, in the case of Thomas and White vs. Dennis A. Smith and others, is to be taken as accurately ascertaining the amount of the share of complainant's intestate in the funds awarded to the Mexican Company, with liberty

to increase or diminish the amount thereof by additional items or charges, or credits, since such settlement. The claim set up occurred long prior to that settlement, and was a claim, if a proper one, against the whole fund—not particularly against the share in controversy in this cause; and 6th. Because the said Robert Oliver did not, in fact, succeed in recovering the claim; but the same was recovered after his death, by reason of a convention between the United States and Mexico.

The Master has, from the evidence and papers in the cause, stated the account herewith returned, marked A. In this account he has charged the defendants with the money received by them, including therein the portion paid to R. Johnson, esquire; also with the dividends on the stock, at the times when the same were payable. And he has also charged them with interest on the money and dividends received, from the times of their respective dates up to the 7th day of April, 1856, to which time the account is made out. The five per cent. loan having been paid off, he has charged the amount so received as money. The six per cent. loan being still outstanding, he has charged them specifically with the said loan. By this account there appears to be due to the complainant, in money, including interest up to the 7th day of April, 1856, the sum of $22,866 94, and the sum of $32,847 77 specifically, in United States six per cent. loan, in certificates. To this is to be added the complainant's costs, which, not having been taxed, the Master was unable to add into the account.

By the defendants' solicitor's directions the Master has stated nine other accounts, which are herewith returned, marked respectively Accounts B, C, D, E, F, G, H, J, and K.

The Master also reports that, at the request of the defendants' solicitor, he paid to witnesses, summoned on the part of the defendants, for attendance before him, and itinerant charges, and for summoning said witnesses, the sum of $12 50, (that is, $25 in two cases of Williams and Gooding, one-half charged to each,) which he asks may be taxed as part of the defendants' costs.

The Master also asks that he may be allowed for his services in stating the accounts, taking testimony, and making this report, the sum of $250.

All of which is respectfully submitted.

ACCOUNT A:

Containing a statement of the amounts due from defendants to complainant, as stated by the Master.

11 April, 1850.	To amount as of the share of complainant's intestate in the Mexican Company, awarded to the executors of Oliver, and paid this day in money, including the alleged interest of George P. Stevenson - -	$3,127 00
7 Sept. 1851.	To amount retained on account of George P. Stevenson's share this day paid to the executors of Oliver, as of share of complainant's intestate in the said company - - - - - - - - - -	118 81

29 Dec. 1851.	To amount of 5 per cent. United States loan awarded to executors of Oliver as of complainant's intestate share in said company, transferred on 11 April, 1850, and paid off by the United States this day at par	$4,097 74	
10 Aug. 1850.	To semi-annual dividend on $4,097 74 five per cent loan		102 44
" Feb. 1851.	" " " "		102 44
" Aug. "	" " " "		102 44
1 July 1850.	" " on $32,847 77 six per cent. loan,		985 43
" Jan. 1851.	" " " "		985 43
" July "	" " " "		985 43
" Jan. 1852.	" " " "		985 43
" July "	" " " "		985 43
" Jan. 1853.	" " " "		985 43
" July "	" " " "		985 43
" Jan. 1854.	" " " "		985 43
" July "	" " " "		985 43
" Jan. 1855.	" " " "		985 43
" July "	" " " "		985 43
" Jan. 1856.	" " " "		985 43
7 April "	interest on $3,127 from 11 April, 1850, to this day,		1,123 64
" " "	interest on $118 81 from 7 Sept. 1851, to this day,		32 67
" " "	on dividends from time of their respective receipts to this day		2,234 60
			$22,866 94

To amount of 6 per cent. loan of the United States, awarded to the executors of Oliver as of the share of complainant's intestate in the Mexican Company transferred 11 April, 1850 $32,847 77

To amount due from the defendants to the complainant in money, including interest to 7th April, 1856 $22,866 94

To amount due from the defendants to the complainant in certificates of six per cent. loan of the United States $32,847 77

To amount of the costs incurred by complainant to be taxed by the clerk

ACCOUNT B:

Containing the Account No. 1, directed to be stated by the Defendants' Counsel.

11 April, 1850. To amount as of the share of complainant's intestate in the Mexican Company actually received in money by the executors of Oliver, (excluding the portion received by R. Johnson, Esq.) $2,814 31

5 Sept. 1851.	To amount retained on account of Stevenson's share and this day paid to executors of Oliver, as of share of complainant's intestate - - -	$118 81
29 Dec. 1851.	To amount of 5 per cent. United States loan actually received by the executors of Oliver, as of complainant's intestate share in said company, and this day paid off at par - - - - -	3,687 97
10 Aug. 1850.	To semi-annual dividend on $3,687 97 five per cent. loan - - - - - - -	92 20
" Feb. 1851.	" " " " "	92 20
" Aug. 1851.	" " " " "	92 20
1 July 1850.	" " " $29,563 six per cent. loan	886 89
" Jan. 1851.	" " " "	886 89
" July "	" " " "	886 89
" Jan. 1852.	" " " "	886 89
" July "	" " " "	886 89
" Jan. 1853.	" " " "	886 89
" July "	" " " "	886 89
" Jan. 1854.	" " " "	886 89
" July "	" " " "	886 89
" Jan. 1855.	" " " "	886 89
" July "	" " " "	886 89
" Jan. 1856.	" " " "	886 89
		$17,540 37
Deduct amount paid out by defendants on account of the share of John Gooding in the Mexican Company, as shown by statement of D. M. Perine - - -		3,829 00
		$13,711 37
Deduct one half as compensation to Oliver and executors		6,855 68
		$6,855 69

To amount of 6 per cent. United States loan actually transferred to the executors of Oliver (excluding portion transferred to R. Johnson) - - - -	$29,563 00
Deduct one half as compensation to Oliver and his executors - - - - - - -	14,781 50
	$14,781 50

To amount due by defendants to complainant in money	$6,855 69
To amount due by defendants to complainant in certificates of six per cent. United States loan - - -	14,781 50

ACCOUNT C:

Containing the Account No. 2, directed to be stated by Defendants' Counsel.

To amount of money and dividends actually received by the executors of Oliver, as shown by account B -	$17,540 37
Deduct amount of money paid out by defendants on account of the share of John Gooding prior to 1st April, 1852, as shown by statement of D. M. Perine -	2,775 73
	$14,764 64
Deduct one-half as compensation to Oliver and his executors - - - - - - - - - -	7,382 32
	$7,382 32
To amount of United States six per cent. loan actually transferred to executors of Oliver, as shown by account B - - - - - - - - - -	$29,563 00
Deduct one-half as compensation to Oliver and his executors - - - - - - - - - -	14,781 50
	$14,781 50
To amount due by defendants to the complainant in money - - - - - - - - - -	$7,382 32
To amount due by defendants to the complainant in certificates of United States six per cent. loan - -	14,781 50

ACCOUNT D:

Containing the Account No. 3, directed to be stated by Defendants' Counsel.

To amount of money and dividends actually received by the executors of Oliver, as shown by account B -	$17,540 37
Deduct one-half as compensation to Oliver and his executors - - - - - - - - - -	8,770 18
	$8,770 19
To amount of United States six per cent. loan actually transferred to executors of Oliver, as shown by account B - - - - - - - - - -	$29,563 00
Deduct one-half as compensation to Oliver and his executors - - - - - - - - - -	14,781 50
	$14,781 50

To amount due by defendants to the complainant in money	$8,770 19
To amount due by defendants to the complainant in certificates of United States six per cent. loan	14,781 50

ACCOUNT E:

Containing the Account No. 4, directed to be stated by Defendants' Counsel.

To five-eighths of the money and dividends actually received by the executors of Oliver, as shown by account B, viz: ⅝ of $17,540 37	$10,962 73
Deduct amount of money paid out by defendants on account of the share of John Gooding, as shown by statement of D. M. Perine	3,829 00
	$7,135 73
Deduct one-half as compensation to Oliver and his executors	3,566 86
	$3,566 87
To five-eighths of the United States six per cent. loan actually transferred to the executors of Oliver, as shown by account B, viz: ⅝ of $29,563	$18,476 87
Deduct one-half as compensation to Oliver and his executors	9,238 43
	$9,238 44
To amount due by defendants to the complainant in money	$3,566 87
To amount due by defendants to the complainant in certificates of United States six per cent. loan	$9,238 44

ACCOUNT F:

Containing the Account No. 5, directed to be stated by Defendants' Counsel.

To five-eighths of the money and dividends actually received by the executors of Oliver, as shown by account B, viz: ⅝ of $17,540 37	$10,962 73
Deduct amount of money paid by defendants on account of the share of John Gooding prior to the 1st April, 1852, as shown by statement of D. M. Perine	2,775 73
	$8,187 00

Deduct one-half as compensation to Oliver and his executors - - - - - - - - - -	$4,093 50
	$4,093 50
To five-eighths of the United States six per cent. loan actually transferred to the executors of Oliver, as shown by account B, viz: ⅝ of $29,563 - - -	$18,476 87
Deduct one-half as compensation to Oliver and his executors - - - - - - - - - -	9,238 43
	$9,238 44
To amount due by defendants to complainant in money	$4,093 50
To amount due by defendants to complainant in certificates of United States six per cent. loan - - -	$9,238 44

ACCOUNT G:

Containing the Account No. 6, directed to be stated by Defendants' Counsel.

To five-eighths of the money and dividends actually received by the executors of Oliver, as shown by account B, viz: ⅝ of $17,540 37 - - - -	$10,962 73
Deduct one-half as compensation to Oliver and his executors - - - - - - - - - -	5,481 36
	$5,481 37
To five-eighths of the United States six per cent. loan actually transferred to the executors of Oliver, as shown by account B, viz: ⅝ of $29,563 - - -	$18,476 87
Deduct one-half as compensation to Oliver and his executors - - - - - - - - - -	9,238 43
	$9,238 44
To amount due by defendants to complainant in money	$5,481 37
To amount due by defendants to complainant in certificates of United States six per cent. loan - - -	9,238 44

ACCOUNT H:

Containing the Account No. 7, directed to be stated by Defendants' Counsel.

To five-eighths of the money and dividends actually received by the executors of Oliver, as shown by account B, viz: ⅝ of $17,540 37 - - - -	$10,962 73

Deduct as compensation to Oliver and his executors one-half of the money and dividends actually received, as shown by account B, viz: one-half of $17,540 37 -	$8,770 18
	$2,192 55
Deduct amount of money paid by defendants on account of the share of John Gooding, as shown by statement of D. M. Perine - - - - -	3,829 00
Excess of deductions over amount received in money	$1,636 45
To five-eighths of the United States six per cent. loan actually transferred to executors of Oliver, as shown by account B, viz: ⅝ of $29,563 - - - -	$18,476 87
Deduct as compensation to Oliver and his executors one-half of the United States six per cent. loan actually transferred to the executors, as shown by account B, viz: one-half of $29,563 - - - - -	14,781 50
	$3,695 37
Deduct for $1,636 45 its equivalent in the United States six per cent. loan, at the value at which it was awarded to the executors of Oliver, viz: $106 75 to the $100	1,746 90
To amount due by defendants to complainant in certificates of United States six per cent. loan - - -	$1,948 47

ACCOUNT J:

Containing the Account No. 8, directed to be stated by Defendants' Counsel.

To five-eighths of the money and dividends actually received by the executors of Oliver, as shown by account B, viz: ⅝ of $17,540 37 - - - -	$10,962 73
Deduct amount of money paid by defendants on account of the share of John Gooding prior to 1st April, 1852, as shown by statement of D. M. Perine - - -	2,775 73
	$8,187 00
Deduct as compensation to Oliver and his executors, one-half of the money and dividends actually received, as shown by account B, viz: one-half of $17,540 37 -	8,770 18
Excess of deductions over amount received in money	$583 18

To five-eighths of the United States six per cent. loan actually transferred to the executors of Oliver, as shown by account B, viz: ⅝ of $29,563		$18,476 87
Deduct as compensation to Oliver and his executors, one-half of the United States six per cent. loan actually transferred to the executors, viz: one-half of $29,563		14,781 50
Balance to complainant in stock		$3,695 37
Deduct for $583 18 in money, its equivalent in the United States six per cent. loan at the value at which it was awarded to the executors of Oliver, viz: $106 75		622 54
To amount due by defendant to complainant in certificates of United States six per cent. loan at its par value		$3,072 83

ACCOUNT K:

Containing the Account No. 9, directed to be stated by Defendants' Counsel.

To five-eighths of the money and dividends actually received by the executors of Oliver, as shown by account B, viz: ⅝ of $17,540 37		$10,962 73
Deduct as compensation to Oliver and his executors, one-half of the money and dividends actually received, as shown by account B, viz: one half of $17,540 37		8,770 18
		$2,192 55
Deduct amount of money paid by defendants on account of the share of John Gooding, as shown by statement of D. M. Perine	$3,829 00	
Deduct $2,000 paid by Oliver on 2d April, 1825, to the permanent trustee of John Gooding, with interest to 9th April, 1856	5,719 33	
		9,548 33
Excess of deduction over amount received in money		$7,355 78
To five-eighths of United States six per cent. loan actually transferred to executors of Oliver, as shown by account B, viz: ⅝ of $29,563		$18,476 87
Deduct as compensation to Oliver and his executors one-half of the United States six per cent. loan actually transferred to executors, as shown by account B, viz: ½ of $29,563		14,781 50
		$3,695 37

The excess of deductions in money over the amount received, greatly exceeding the remainder left on the United States six per cent. loan, there is nothing due by this account to the complainant, either in money or certificates of loan.

In the Circuit Court of the United States for the district of Maryland.

vs.
ROBERT M. GIBBES and CHARLES OLIVER, executors of Robert Oliver.

Proceedings before Levin Gale, Special Master.

The Master having at various times appointed days for the taking of testimony and receiving evidence, of which due notice could not be given because of the absence of the solicitors for the defendants, at length gave notice to the solicitors of the respective parties that he would receive evidence at his office, No. 34 St. Paul's street, in the city of Baltimore, on the 21st day of September, 1855; on which day Grafton L. Dulany, esquire, appeared on behalf of the complainant, and J. M. Campbell, esquire, appeared on behalf of the defendants; and David M. Perine was produced on behalf of the complainant, and was by me duly sworn; and G. L. Dulany, esq. proceeded to examine the said witness on behalf of the complainant, but the said witness stating in answer to questions propounded to him that the matters inquired into related to numerous matters of account which it was impossible for him to answer without examination into many papers and books, it was agreed by the solicitors for the respective parties that Mr. Dulany should inform the witness what information and evidence he desired to obtain, and that the witness should make the necessary examinations, and report to the Master so soon as he was prepared to give evidence thereof. That on the 15th of October, 1855, the solicitors of the respective parties being present after due notice given to them, the said David M. Perine appeared before me, and being examined on behalf of the complainant, in answer to verbal questions propounded by G. L. Dulany, esquire, the said David M. Perine deposed, answered and said as follows, to wit:

That he has not at this time a personal recollection of all the facts now inquired of him, but upon reference to the books and papers in his possession, it appears that the amount of the fund awarded to the executors of Robert Oliver, deceased, by the decrees of the court of appeals of Maryland as of the shares of James Williams and John Gooding, was as follows, viz: in certificates the sum of $42,827 73⅓, and in money $16,321 71, "together with all interests, profits, or accumulations thereon which may have arisen and been received by them, the said trustees (Glenn and Perine), on account of said certificates, or on account and from any investment of any proceeds of the same, or any investment of the said proceeds, or of the said sum decreed to be paid in money, which may have been made under the order and direction of the court below," as will more fully appear by reference to the said

decree bearing date 23d June, 1849. It also appears by the decree of the court below (being Baltimore county court sitting as a court of equity,) bearing date the 5th day of December, 1846, among other things, that the trustees, Glenn and Perine, were orderd to distribute to the executors of Robert Oliver for the shares of John Gooding and James Williams, in certificates, $42,827 73½, and in money $16,321 71, as will also more fully appear by reference to said last mentioned decree.

It also appears by the final report made by the deponent and his co-trustee, John Glenn, to the court of appeals of Maryland, under date of the 23d May, 1850, and filed in said court on the 24th May, 1850, that after the 5th day of December, 1846, the Mexican certificates mentioned in said decree were paid off, and the amount received for the same, together with the money then in the hands of the trustees, Glenn and Perine, was invested by them under the orders and decrees of Baltimore county court, and that after having made said investments in obedience to said orders and decrees, the deponent and his co-trustee aforesaid made a report from time to time of all their proceedings in relation to the funds in their hands as trustees to said court, as will more fully appear by reference to their 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, and 17th reports filed in said court after the said 5th day of December, 1846, and which reports contain all the particulars of said investments as well as of all money or funds which came to the possession of the trustees after the said 5th day of December, 1846; and as the said reports are voluminous, the deponent supposes it to be unnecessary for him to incorporate them in this deposition, but begs leave respectfully to refer all parties interested in the same to said reports, now on file in said court, for full and minute information on this subject

It also appears by said final report, made to the court of appeals of Maryland, under date of the 23d May, 1850, as aforesaid, that this deponent and his co-trustee aforesaid, in obedience to the orders and decrees of said court of appeals, passed on the 23d day of June, 1849, and of the attachments issued by said court of appeals on the 23d March, 1850, to compel a compliance with said orders and decrees, and of the order and decree of Baltimore county court of the 5th December, 1846, paid, transferred, and delivered over to the parties entitled by said orders, decrees and attachments, all the stocks, funds, and money, as directed by said orders, decrees and attachments, and which was all the stocks, funds, and money then in the hands of the deponent and his co-trustee aforesaid; and that neither the deponent nor his co-trustee did ever receive as trustees aforesaid any further stock, funds, or money on account of said trust, after making their said final report on the 23d May, 1850; and that all the stocks, funds, and money which they, or either of them, received on account of said trust was embraced in their several reports made to the court as aforesaid; and that neither the deponent nor his co-trustee did at any time use any of the money or funds which they held, as trustees aforesaid, but that the same, as received by them, was deposited in bank in their

joint names as trustees of Mexican claims, and only drawn out of said bank when necessary to comply with the orders of court, and for that purpose only.

By the said final report and the exhibits thereto, made to the court of appeals of Maryland, under date of the 23d May, 1850, as aforesaid, it further appears, among other things, that the whole amount of the stocks, funds, and money which were then in the hands of the deponent and his co-trustee for the party or parties entitled to the shares of James Williams and John Gooding were, on the 11th day of April, 1850, in obedience to the said orders, decrees and attachments, transferred and delivered over, as follows, viz:

To Reverdy Johnson the following—being 10 per cent. of the portion formerly held on account of the share of James Williams, viz:

$399 85 of United States 5 per cent. loan at	$399 85	
$3,209 30 of United States 6 per cent. loan at	3,426 23	
And in money - - - - -	304 56	
		$4,130 64

To Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, deceased, the following, viz:

$3,598 70 of U. States 5 per cent. loan at	$3,598 70	
$28,883 72 of U. States 6 per cent. loan at	30,836 00	
And in money - - - - -	2,741 07	
		37,175 77
		$41,306 41

Being the portion formerly held on account of the share of James Williams.

To Reverdy Johnson the following—being 10 per cent. of the portion formerly held on account of the share of John Gooding, viz:

$399 85 of United States 5 per cent. loan at	$399 85	
$3,209 30 of United States 6 per cent. loan at	3,426 23	
And in money - - - - -	304 56	
		$4,130 64

To Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, deceased, the following, viz:

$3,598 70 of United States 5 per cent. loan at	$3,598 70	
$28,883 72 of U. States 6 per cent. loan at	30,836 00	
And in money - - - - -	2,741 07	
		37,175 77
		$41,306 41

Being the portion formerly held on account of the share of John Gooding.

It also appears by the said final report of the 23d May, 1850, that certain stocks and money were held by the deponent and his co-trustee,

for an alleged interest of George P. Stevenson in the fund, but which were, in obedience to the said orders, decrees and attachments, transferred and delivered over to the parties entitled, as directed by said orders, decrees and attachments, and among others the following portion was transferred and delivered on the 11th of April, 1850, as follows, viz:

To Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, deceased:

$357 08 of United States 5 per cent. loan at - -	$357 08
$2,717 11 of United States 6 per cent. loan at - -	2,902 45
And in money - - - - - - - -	292 97
	$3,552 50

Being for four-sevenths of the alleged interest of George P. Stevenson.

One of those four-sevenths was in right of the share of James Williams, and one other of the four-sevenths was in right of the share of John Gooding. Each one-fourth aforesaid would therefore be as follows, as near as it could be made, viz:

$89 27 of United States 5 per cent. loan at - - -	$89 27
$679 28 of United States 6 per cent. loan at - - -	725 61
And in money - - - - - - -	73 24
	$888 12

In addition to which, the deponent and his co-trustee aforesaid transferred and delivered over, in pursuance of said orders, decrees, and attachments, to Reverdy Johnson, in kind, 10 per cent. of the amount of the stocks and money which were held by them for the alleged interest of George P. Stevenson in the fund as aforesaid, as will more particularly appear by said final report.

And the deponent further saith, that it appears by the books of the executors of Robert Oliver, that they received from the government of the United States, on the 5th day of September, 1851, the further sum of $118 81 in money, being one-seventh of the amount retained by Thomas and White on account of G. P. Stevenson's share, and which said $118 81 was so received on account of the share of James Williams, and a like sum of $118 81 was also received by said executors at the same time on account of the share of John Gooding.

And it also appears by said books that the whole amount of the 5 per cent. loan or stock, mentioned in the previous and subsequent part of this deposition, so far as the same was received by said executors, was paid off by the government to the said executors on the 29th December, 1851, at par.

And it also appears by the books and papers of the said executors that the whole amount of the money and stock, which the said execu-

tors received as aforesaid on account of the shares of James Williams and John Gooding, was on the 3d and 6th of January, 1852, paid, transferred, and delivered over by them to Robert M. Gibbes, Charles Oliver, Allen Thomas, and Columbus O'Donnell, the then trustees under the last will and testament of the said Robert Oliver, and, as this deponent was informed at the time, was so paid, transferred, and delivered over to the said trustees by the said executors in pursuance of the advice and direction of their counsel, Reverdy Johnson, esq., who stated to them it was their duty then to make such payment, transfer, and delivery.

And the deponent further saith, that it also appears by said final report and the exhibits thereto, made to the court of appeals of Maryland, under date of the 23d May, 1850, as aforesaid, that this deponent and his co-trustee aforesaid did, on the 11th day of April, 1850, in obedience to the orders and decrees of said court of appeals, passed on the 23d June, 1849, and of the attachment issued by said court of appeals on the 23d March, 1850, to compel a compliance of said orders and decrees, paid, transferred, and delivered over to the parties entitled by said orders, decrees, and attachments, the whole amount of the stocks, funds, and money which were then in the hands of the deponent and his co-trustee, for the party or parties entitled to the share and interest of Lyde Goodwin, that is to say:

To Reverdy Johnson the following, viz: being 15 per cent. of the portion formerly held on account of the claim of Lyde Goodwin's legal representatives for 5 per cent. commission:

$386 28 of United States 5 per cent. loan at	$386 28	
$3,024 06 of United States 6 per cent. loan at	3,228 48	
And in money - - - - -	292 84	
		$3,907 60
To Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, deceased, the following, viz:		
$2,188 95 of U. States 5 per cent. loan at	$2,188 95	
$17,136 37 of U. States 6 per cent. loan at	18,294 78	
And in money - - - - -	1,659 39	
		22,143 12
		$26,050 72

Being the portion formerly held on account of the claim of Lyde Goodwin's legal representatives of 5 per cent. commission.

To Reverdy Johnson the following—being 15 per cent. of the portion formerly held on account of the share of Lyde Goodwin, viz:

$599 78 of United States 5 per cent. loan at	$599 78	
$4,813 95 of United States 6 per cent. loan at	5,139 34	
And in money - - - - -	456 84	
		$6,195 96

To Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, deceased, the following, viz:

$3,398 77 of United States 5 per cent. loan at	$3,398 77	
$27,279 08 of United States 6 per cent. loan at	29,122 90	
And in money - - - - -	2,588 80	
		$35,110 47
		$41,306 43

Being the portion formerly held on account of the share of Lyde Goodwin.

It also appears by said final report of the 23d May, 1850, that certain stocks and money were held by the deponent and his co-trustee for an alleged interest of George P. Stevenson in the fund, but which were, in obedience to the said orders, decrees and attachments, transferred and delivered over to the parties entitled, as directed by said orders, decrees, and attachments, and among others the following portion was transferred and delivered on the 11th of April, 1850, as follows, viz:

To Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, deceased:

$357 08 of United States 5 per cent. loan at - -	$357 08
$2,717 11 of United States 6 per cent. loan at - -	2,902 45
And in money - - - - - - -	292 97
	$3,552 50

Being for four-sevenths of the alleged interest of George P. Stevenson.

One of those four-sevenths was in right of the share of Lyde Goodwin, and was as follows, as near as could be made, viz:

$89 27 of United States 5 per cent. loan at - - -	$89 27
$679 28 of United States 6 per cent. loan at - - -	725 61
And in money - - - - - - -	73 24
	$888 12

In addition to which the deponent and his co-trustee aforesaid transferred and delivered over, in pursuance of said orders, decrees, and attachments, to Reverdy Johnson, in kind, 10 per cent. of the amount of the stocks and money which were held by them, for the alleged interest of George P. Stevenson in the fund as aforesaid, as will more particularly appear by said final report.

And it also appears by the books of the said executors that they received from the government of the United States on the 5th of Sept. 1851, the further sum of $118 81 in money, being one-seventh of the

amount retained by Thomas and White on account of G. P. Stevenson's share, and which said $118 81 was so received on account of the share of Lyde Goodwin. And it also appears by the books of the said executors, that they received from the government of the United States on the said 5th September, 1851, the further sum of $3,084 12 in money, on account of the amount retained by Thomas & White for 5 per cent. commission to said Lyde Goodwin.

It also appears by the books of the said executors that they received 5 per cent. interest on all the 5 per cent. loan mentioned above in this deposition, from the 10th February, 1850, to the 10th August, 1851, and that they also received 6 per cent. interest on the 6 per cent. loan mentioned above in this deposition, for that portion they received on account of the shares of James Williams and John Gooding, from the 1st January, 1850, to the 6th day of January, 1852, when the same was transferred and delivered over to the trustees, under the will of Robert Oliver, as heretofore stated in this deposition, and that the said executors also received 6 per cent. interest on all the 6 per cent. loan above mentioned in this deposition for that portion they received on account of the share and commission of Lyde Goodwin, from the 1st January, 1850, to 2d day of July, 1855. That the interest on all the said 5 per cent. loan was payable semi annually on the 10th day of February and August in each year, and that the interest on all the said six per cent. loan was also payable semi-annually on the 1st January and July in each year.

And the deponent further saith, that it doth not appear that the said executors received any funds of any kind on account of the shares of James Williams or John Gooding or Lyde Goodwin, or for the commissions of Lyde Goodwin, until the 11th day of April, 1850, since which time the said executors have purchased no stock of any kind, or made any investments of any kind, or loans of any kind except the following, if such can be so considered: that is to say, the said executors deposited with Alexander Brown & Sons (bankers) on the 17th July, 1850, the sum of $10,500 on interest, at 4 per cent. per annum; and on the 10th January, 1851, the further sum of $5,500 on interest, at 4 per cent. per annum; and that in the month of January, 1852, the said Alexander Brown & Sons returned to the said executors the whole of the said $16,000 so deposited with them as aforesaid, together with the sum of $872 for interest due on the same at 4 per cent. per annum, as above mentioned. On the 30th day of January, 1852, the said executors deposited in the Union Bank of Maryland, on interest at 4 per cent. per annum, the sum of $14,000, and on the 2d January, 1854, the further sum of $4,000 on interest at 4 per cent. per annum, which two latter sums, amounting together to $18,000, is still on deposit in said bank, in the names of the said surviving executors.

And the deponent further saith: It appears by the books of the said executors, that they have neither paid over any money or transferred any stocks or funds of any kind to the trustees under the will of Robert Oliver, or to any of his heirs or legatees, since the time they paid over

the money and transferred the stock which they then held on account of the shares of James Williams and John Gooding, to wit, on the 3d and 6th January, 1852. And all money received by the said executors, since the time they administered on the estate of the said deceased, to wit, on the 10th June, 1835, was always deposited in bank in their joint names, as executors of the said Robert Oliver, from time to time, as received by them, and was never used by them for their individual purposes at any time, but was always used exclusively for the estate of the said Robert Oliver. That all the debts due by the said Robert Oliver at the time of his decease was paid off by his executors as soon after his decease as they could command the necessary funds to do so, the greater portion having been paid within twelve months from the time they administered, and all of them paid several years since, the last one having been paid anterior to the 1st January, 1850. That the whole amount of assets which the executors had in their hands on the 10th day of April, 1850, was $458 98, and which was in money.

That the amount of assets which they had in hand on the 21st August, 1852, was as follows, viz:

$45,100 of United States 6 per cent. loan at - -	$48,148 91
$14,000 on deposit in the Union Bank at 4 per cent. per annum - - - - - - - - - -	14.000 00
And in money - - - - - - - - -	2,287 36
	$64,436 27

That the amount of assets which they had in hand on the 28th November, 1853, was as follows, viz:

$45,100 of United States 6 per cent. loan, valued at -	$48,148 91
$14,000 on deposit in the Union Bank at 4 per cent. per annum - - - - - - - - - -	14,000 00
And in money - - - - - - - - -	2,598 47
	$64,747 38

That the amount of assets which the said executors have now in hand, that is on the fifteenth day of Oct., 1855, is as follows, viz:

$45,100 of United States 6 per cent. loan at - -	$48,148 91
$18,000 on deposit in the Union Bank of Maryland at 4 per cent. per annum - - - - - - -	18,000 00
And in money - - - - - - - - -	744 81
	$66,893 72

And that the certificates for the said $45,100 of United States loan is now deposited in a box belonging to said executors in the said Union Bank.

It also appears by said books and papers of said executors that the above $45,100 of United States 6 per cent. loan was received by the executors from the deponent and his co-trustee aforesaid on the 11th of April, 1850, and retained by said executors, to abide the result of the suits brought to recover the same on account of Lyde Goodwin's share and commissions, and which was as follows, viz:

$17,136 37	of United States 6 per cent. loan received and retained on account of Lyde Goodwin's claim to 5 per cent. commission at			$18,294 78
$27,279 08	of same on account of his share at	$29,122 90		
679 28	of same on account of his portion of G. P. Stevenson's share	725 61		
45,094 73				29,848 51
5 27	a fractional part of D. A. Smith's share.			
				$48,143 29
$45,100 00	retained by the executors.			

And the deponent further saith, that it appears by the books and papers of the said executors that they have, from time to time, paid various sums of money to their counsel and for officer's fees, and other expenses incurred by them in prosecuting and defending the suits which have arisen in relation to the said shares of the said James Williams and John Gooding; and that the amount thus paid on account of the share of James Williams was upwards of $3,900, of which $2,700 and upwards was paid before the 1st of April, 1852. And on account of the share of John Gooding upwards of $3,800, of which $2,700 and upwards was paid before the 1st of April, 1852.

The solicitor for the complainant then filed the following agreement, to wit:

It is agreed that the foregoing statement of Mr. Perine shall be admitted in evidence as if the same had been in answer to interrogatories regularly filed, and that all objections to the admissibility thereof shall be waived, and that it shall be taken in evidence in the same manner as if the books, papers and accounts therein referred to were produced in both cases.

J. M. CAMPBELL,
For Oliver's Executors.

G. L. DULANY,
Solicitor for Complainants.

That the said G. L. Dulany then announced that the complainant had closed his evidence. The Master then fixed the 25th day of October, 1855, for taking testimony on behalf of the defendants, and gave notice thereof to the counsel of the respective parties.

On the 25th day of October, 1855, pursuant to the notice, G. L. Dulany, esquire, on behalf of the complainant, and J. M. Campbell and Reverdy Johnson, esquires, on behalf of the defendants, appeared before the Master, at his said office, and there was produced, as witnesses on behalf of the defendants, James H. Causten and Richard Burgess.

James H. Causten, having been by me first carefully examined and cautioned and duly sworn to testify the whole truth, and being examined on behalf of the defendants in the said cause by Reverdy Johnson, esquire, deposeth and saith, in answer to the questions herein set forth, as follows, to wit:

Question. State your age, residence and occupation?

Answer. I am sixty-six years of age, reside in Washington city, and my occupation is solicitor and agent for claims, etc.

Question. Did you know the late Robert Oliver, and were you at any time spoken to or employed by him in relation to the claim of what was called the Mexican Company upon the government of Mexico, or that of the United States?

Answer. I knew the late Robert Oliver for many years. Mr. Oliver had employed a Mr. Miller as agent in that matter and to visit Mexico, which he did more than once. Mr. Oliver requested me to render Mr. Miller any facilities in my power during his stay at Washington, and in consequence thereof I did assist Mr. Miller making searches at the State Department, and procuring, and making myself for him, copies of various documents in relation to said claim.

Question. Did Mr. Oliver make that request of you before the first treaty with Mexico on which the claim was allowed? and state, as accurately as you can, the time at which such request was made.

Answer. The request was made several years prior to the date of the convention of 1839 with Mexico, and at a time when said convention or any treaty was not contemplated or expected. It was several years prior, but I cannot state exactly the time.

Question. From your knowledge of the claim and of the prospects of its being recovered, and of the labor attending it by the attempt to recover it, what do you think would have been a fair compensation for undertaking to recover it, as the attorney for the claimants?

Answer. That is a difficult question to answer. A great deal would depend upon the terms offered; that is to say, whether a fee in hand, and whether the contingent expenses were to be paid by the agent or by the proprietor.

Question. Suppose the agent to bear his own expenses, and his compensation to be altogether contingent, what do you think would then be a fair contingent compensation?

Answer. In view of the faithless character of the Mexican government, the difficulty of reaching it by any influence that could be brought into use in this case, the certainty of repeated visits to Mexico being indispensable, I should and did regard the effort to recover this claim

as a forlorn hope, and so told Mr. Miller again and again. Under these circumstances, I should have hesitated long on an offer of an agency at fifty per cent.

Question. Do I understand you then to say that, under the circumstances to which you have referred in your preceding answer, fifty per cent. on the amount recovered would not be more than a reasonable compensation for such an agency?

Answer. Yes.

Question. Have you acted as agent for claims upon the United States and foreign governments, and are you acquainted with the rates of compensation for agencies of that kind? if you are, state how such services are usually compensated.

Answer. I have acted repeatedly; very often with claims against foreign governments, under treaties with Denmark, France, Spain, twice with Mexico, &c. Under two Mexican treaties I had charge of one-third of the claims in number before the boards of commissioners. And I also have acted as agent in various claims against the United States. There is no fixed rate of compensation. The compensation claimed and allowed varies very materially, dependent upon the character and amount of the claim, the party claimed against, the probability of success, the probable time consumed, and the expenses attending the prosecution. I speak of their being various; I should add that they vary from two and a half to fifty per cent., dependent upon the various circumstances above stated. I have myself received a clear commission of twenty-five per cent. from a party who had paid an advanced fee and all expenses of the prosecution. I mean twenty-five per cent. on the sum recovered.

Question. What claim was that?

Answer. Under the Mexican treaties, and I was employed after the first treaty was made. It was purely under the treaty. I was not employed to prosecute it against the Mexican government. The claim was for about one hundred thousand dollars. And in many other cases different rates from five to twenty-five per cent. for claims under the same treaty—the parties in each case, however, advancing or making a retaining fee, and paying all expenses.

And the said James H. Causten, being cross-examined on behalf of the complainants by Grafton L. Dulany, esq., further deposeth and saith as follows, to wit:

Question. How many documents did you obtain at the request of Mr. Oliver?

Answer. My memory does not serve me; I know that they were many, and occupied considerable time; my desire being to serve both Mr Oliver and Mr. Miller.

Question. What were the documents?

Answer. I cannot now describe them; they were such as Mr. Miller considered material to his object.

Question. Do you know of the existence of any usage compensating agents and fixing the amount in the absence of any special agreement between the parties?

Answer. I know the usage is to compensate agents, but not of any fixed rate of compensation, that being dependent upon the circumstances attending the claim and its prosecution.

Question. In case of the employment of an agent on a contingent per centage, is he entitled to anything if he does not succeed?

Answer. No; I mean by that to say that he is not entitled to any commissions.

Question. Do you know what was the amount of the claim in this case?

Answer. I do not now recollect, but I certainly did know at the time of the aid rendered to Mr. Miller many years ago; since I then read many papers, perhaps all Mr. Miller had then in his possession, in relation to it, together with a printed pamphlet, of which said Miller was the author; I had the pamphlet, but do not know whether I have a copy now or not; I think I have a copy, and if I have I will send it up to the commissioner; the claim was quite a large one.

[The complainant's counsel gives the defendants' counsel notice to produce the pamphlet referred to; the defendants' counsel says that the defendants have not, nor have their counsel, the said pamphlet, and that they are willing and hope the witness will send the copy to the commissioner.]

Question. Were you aware whether or not at the time you furnished this aid to Mr. Miller, that the Mexican government had passed acts of congress recognising this claim?

Answer. My recollection is not perfect; I think I was not aware of it at that time, and knew it only within the last few weeks, and if I had known it at the time it would have inspired me with no confidence in that claim or any other; I had cases against that government, for which special laws were passed, and no recovery obtained until the United States concluded the conventions with Mexico of 1839 and 1848; I speak of the faithlessness of the government of Mexico with more confidence, since I had claims as agent against that government, for the relief of which special laws of the Mexican government had been passed, and the relief contemplated by them not carried into effect until the government of the United States had effected the conventions with Mexico of 1839 and 1848, under which compensation was made to the parties.

Question. In making your contracts for compensation, is not the amount of the claim one element in the amount of the commissions which are asked?

Answer. Certainly, and a very important one.

Richard Burgess having been by me first carefully examined and cautioned, and duly sworn to testify the whole truth, and being exam-

ined on behalf of the defendants in the said cause by Reverdy Johnson, esquire, makes oath, deposeth and saith, in answer to the questions herein set forth, as follows, to wit:

Question. What is your age, residence, and occupation?

Answer. My age is about sixty-six; my residence is Washington, and my occupation is that of agent for the prosecution of claims; I have been so engaged eight or nine years.

Question. Had you any knowledge of the claim which was called the claim of the Mexican Company against the Mexican government?

Answer. I had not.

Question. Have you acted as agent of persons having claims upon the Mexican government at any time, and when; and if so, what was or is to be your compensation?

Answer. I am now engaged in the prosecution of the claims of four citizens of the United States against the Mexican government; the compensation I am to receive is a commission of twenty per cent. upon the amount recovered, and nothing in the event of the failure thereof; I was employed in these cases about nine or ten months ago.

Question. Was any fee paid you in advance in these cases, and by whom are the expenses, other than your commissions, which may be incurred in the prosecution of the claims, to be paid—by you, or by your principal?

Answer. I received no money in advance. I am to incur no expenses in prosecuting the claims; they are to be paid by the principals.

Question. What is the aggregate amount of the four claims you refer to? State the same as nearly as you can.

Answer. About two hundred thousand dollars.

Question. Have you been agent for other claims against other governments, or for claims upon the United States? If so, state what compensation you have received or are to receive; and if you have knowledge of the compensation for such services paid to others, state it.

Answer. I have had the prosecution of no claims against any other foreign government, but numerous claims against the United States. My compensation has varied according to circumstances; my usual charge is ten per cent.—I have received as high as fifty. It is almost impossible to answer the question as to what compensation others receive, it varies so much. I have known as much as fifty per cent. to be paid; twenty-five per cent. to thirty-three per cent. is the usual charge for certain classes, such as revolutionary claims.

And the said Richard Burgess, being cross-examined on behalf of the complainants by Grafton L. Dulany, esq., further deposeth and saith as follows, to wit:

Question. Do you know of any usage that fixes generally the compensation of agents for claims, independent of special agreement or contracts with the parties? I refer to usage, and not to your opinion.

Answer. I know of no general usage on the subject. It is a matter

of contract, except in the case of land warrants, where there is a pretty general usage as to the price charged.

At the request of the defendants' solicitors, the Master then fixed the 1st day of November, 1855, for the further taking of testimony on behalf of the defendants, and gave notice to the solicitors of the respective parties.

On the 1st day of November, 1855, pursuant to the notice, G. L. Dulany, esquire, on behalf of the complainant, and J. M. Campbell and Reverdy Johnson, esquires, on behalf of the defendants, appeared before me, and John Mason was produced as a witness on behalf of the defendants.

John Mason, having been by me first carefully examined and cautioned, and duly sworn to testify the whole truth, and being examined on behalf of the defendants in the said cause by Reverdy Johnson, esquire, deposeth and saith, in answer to the questions herein set forth, as follows, to wit:

Question. State your age, residence, and occupation.

Answer. I am fifty-eight years of age, reside in Washington city, and I am employed in the office of the Attorney General of the United States.

Question. Have you any knowledge of the claim of what was called the Mexican Company of Baltimore upon the republic of Mexico; and if so, was it afterwards paid under a treaty between the United States and Mexico; and if so, under what treaty?

Answer. I have full knowledge of that claim; it was paid under the treaty of 1839.

Question. Were you employed at any time, and by whom, to prosecute that claim before the Mexican government; and, if you were, how long did you act as agent, and did you afterwards act as agent in prosecuting that claim before the commission constituted under that treaty, and for whom did you act in this last agency?

Answer. I was employed to prosecute that claim against the Mexican government by the late Robert Oliver, of Baltimore. I acted as the agent of Mr. Oliver during my residence in Mexico, which was about five years. I was secretary of legation of the United States during that time; during a year of that time I was absent in the United States, on business connected with the legation. Joel R. Poinsett was the minister of the United States. I acted as agent before the mixed board of commissioners, which met at Washington. I was employed by the executors of Robert Oliver.

Question. Did you act as the agent of anybody else, in reference to that claim, other than Robert Oliver, in his lifetime, and his executors since his death?

Answer. I acted for Mr. Oliver alone, and knew no one else as controlling the claim; and after his death was employed by his executors to prosecute the claim before the commissioners; and I knew no one else in that business.

Question. From your knowledge of the claim, and of its condition at the time you were first employed by Mr. Oliver, can you state what would be a fair commission to be allowed him for his services in prosecuting it, he bearing all the expenses, and of the services of his executors after his death? If you can, state it.

Answer. You ask for an opinion; I know that the government of Mexico at that time, 1825, when I first went to the country as secretary of legation, had very limited means, and they were derived principally from a loan made in England; that there were numerous demands upon that government, and that during my residence in that country I never knew or heard that any one of those demands were satisfied, in whole or in part, and this claim was considered by myself, by Mr. Poinsett, the minister, and by all others who knew any thing of its amount or history, as utterly hopeless. If I had been employed to prosecute that claim, and had to go to Mexico for that purpose, I should have required all my expenses to be paid, and a salary of at least five thousand dollars a year during my residence there for the prosecution of this object; and, in the event of success, a commission of at least thirty-five per cent.

If Mr. Oliver was to bear the expenses of prosecuting the claim, and to be remunerated for them and his trouble only in the event of success, I should not think fifty per cent. more than he was entitled to.

Question. Look at the letters now shown you, purporting to be from yourself to Mr. Oliver, marked J. M., No. 1 to No. 9, inclusive, and state if they were written by you and sent to Mr. Oliver as of their respective dates?

Answer. They were.

Question. Look at the paper now shown you, marked J. M., No. 10, purporting to be a receipt for a certain book and to be signed by A. Butler, dated 3d of January, 1830, and state if that is an authentic paper, and who Mr. Butler was at that time, and what the book was to which it refers?

Answer. The paper is authentic—the body of it is in my own handwriting; the signature is that of Anthony Butler, the chargé d'affaires of the United States to Mexico at that time, and successor to Mr. Poinsett. The book referred to contained the original entries of sundry charges against General Xavier Mina, signed by the General—and the same were handed over to Mr. Butler, as appears by the receipt, subject to the order of Robert Oliver. It was upon that book that the claim was allowed by the board of commissioners.

Question. Look at the letters now shown you, marked J. M., No. 11 to No. 15, inslusive, and state whether they were letters from Mr. Oliver to you, received by you in due course, and were in reference to your agency for this claim?

Answer. These are letters addressed by Mr. Oliver to me in Mexico, and received by me there.

Question. Look at the letters now shown you, marked J. M., No. 16 to No. 22, inclusive, purporting to be from Mr. Poinsett the minis-

ter, and state whether you know his handwriting, and whether they are his letters, and whether he is now living?

Answer. I know Mr. Poinsett's handwriting. The letters are his, and are addressed to Mr. Oliver. Mr. Poinsett is dead: he died several years ago.

Question. Look at the two letters now shown you, numbered J. M., 23 and 24, and say whether you know the handwriting of Louis McLane and the late Daniel Brent; and if so, state whether said letters are signed by them respectively?

Answer. The letter of the date of 12th October, 1832, is the handwriting of Daniel Brent, and signed by him. I don't know the handwriting of Louis McLane.

[The handwriting of the letters signed Louis McLane, Powhatan Ellis, and A. Vail, is admitted by complainant's solicitor.]

Question. Look at the letters now shown you, marked J. M., No. 25 to 31, inclusive, purporting to be from Abraham Miller to Mr. Oliver, and state if you know the handwriting of Miller, and whether they are his letters, and what connection Mr. Miller had with this claim?

Answer. I know the handwriting of Abraham Miller. These letters are in his handwriting, and signed by him. Mr. Miller was acting as the agent of Mr. Oliver in Mexico after I left that country, and was associated with me in prosecuting the claim before the board of commissioners.

Question. Look at the letters now shown to you, marked J. M., No. 32 to No. 42, inclusive, and say if you know the handwriting of the parties purporting to sign them, and say whether they are in the handwriting of such persons respectively?

Answer. I recognise in these letters the signatures of John Forsyth, Abraham Miller, and Joel R. Poinsett, and their signatures are genuine—the others I do not know.

Question. Look at the letters now shown you, marked J. M., No. 43 to No. 67, inclusive, and say if you are acquainted with the handwriting of the late Francis S. Key, and say whether they are in his handwriting?

Answer. I have received letters from Mr. Key, but can't say I am well acquainted with his handwriting. I believe the signature is his, but am not positive.

Question. Look at the letters now shown you, marked J. M., No. 68 to No. 92, inclusive, and say if they are letters signed by yourself and Mr. Abraham Miller, the person to whom you have before referred?

Answer. The papers are genuine, and were signed by myself and Abraham Miller.

Question. Is Mr. Miller living or dead; and if dead, when did he die?

Answer. Mr. Miller died in Washington, I think in 1843.

And the said John Mason being cross-examined on behalf of the

complainant by Grafton L. Dulany, esquire, further deposeth and saith, as follows, to wit:

Question. Do you know of any usage affixing compensation for an agent to prosecute claims on a foreign government, in the absence of an agreement?

Answer. I know of no usage in the absence of an agreement.

Question. When you speak of Mr. Oliver being entitled to fifty per cent., as stated in your examination in chief, do you speak of it as your individual opinion?

Answer. I do.

The defendants' solicitors then filed with the Master the several papers, (which are herewith returned,) which were exhibited to the witness, John Mason, and referred to in the foregoing deposition, marked, respectively, Defendants' Exhibits, J. M., from No. 1 to No. 92, inclusive.

The defendants' solicitors also filed with the Master the four letters herewith returned, purporting to be from Lewis Brantz, and marked Defendants' Exhibits, L. B., from No. 1 to No. 4, inclusive, which letters the complainant's solicitor admits to be genuine.

The defendants' solicitors also filed with the Master the paper herewith returned, marked Defendants' Exhibit, R. O., No. 1, which the complainant's solicitor admits to be a genuine letter written by the late Robert Oliver, and also filed nine other papers herewith returned, marked Defendants' Exhibits, R. O., from No. 2 to No. 10, inclusive, which the complainant's solicitor admits to be true copies of what they severally purport to be, and agrees that they shall have like effect as if the originals were produced and proved.

At the request of the defendants' solicitors, the Master then fixed the 3d day of November, 1855, for taking further evidence on behalf of the defendants, and gave notice thereof to the solicitors of the respective parties.

On the 3d day of November, 1855, pursuant to the notice, G. L. Dulany, esquire, on behalf of the complainant, and J. M. Campbell, esquire, on behalf of the defendants, appeared before the Master, and the defendants' solicitor filed with the Master the papers herewith returned, marked Defendants' Exhibit, J. M. C., from No. 1 to No. 19, inclusive.

The defendants' solicitor then gave notice that the defendants had closed their evidence, provided the complainants did not offer any other or further evidence; and the complainant's solicitor stated that he did not intend to offer further evidence.

Afterwards G. L. Dulany, esquire, applied to the Master to have the witness, David M. Perine, recalled and further examined on behalf of the defendants, and the Master then fixed the 26th day of November, 1855, for the re-examination of the said witness, and gave notice thereof to the solicitors of both parties.

On the 26th day of November, 1855, pursuant to the notice, G. L. Dulany, esquire, on behalf of the complainant, and J. M. Campbell

and Reverdy Johnson, esquires, on behalf of the defendants, and the witness, David M. Perine, appeared before the Master, and thereupon the said G. L. Dulany, esq., proceeded further to examine the said witness.

And the said David M. Perine being examined on behalf of the complainant, by G. L. Dulany, on the questions herein set forth, deposed, answered, and said as follows, to wit:

Question. Were the counsel fees, stated in your previous deposition in these cases to have been paid by the defendants to Mr. Johnson, so paid by them under any written contract between him and them? Was there any written contract for the payment of said fees between said executors and Mr. Johnson?

Answer. I refer to my former deposition for the answer to this interrogatory as to the amount paid to Mr. Johnson, and the ground upon which it was paid. Mr. Glenn and myself, as trustees, paid the amount to Mr. Johnson, in obedience to the orders, decrees, and attachments issuing from the court of appeals of Maryland, as stated in my deposition. There was a written contract between the executors of Mr. Oliver and Mr. Johnson.

The complainant's solicitor then filed with the Master the following paper and agreement:

In the four cases which are now pending between the executors of Robert Oliver and the trustees of Lyde Goodwin, James Williams and John Gooding, respectively, in relation to certain Mexican trust funds now in dispute between said parties, it is agreed that the said executors will allow to their counsel, and the counsel hereby agree to accept, the following compensation for services in prosecuting or defending said cases on behalf of the said executors in all the courts that the same may be carried, viz:

1st. The amount of 10 per cent. of whatever may be received by said executors from the two cases of Jas. Williams and John Gooding.

2d. The amount of 15 per cent. of whatever may be received by said executors from the two cases of Lyde Goodwin. One being for his claim of 5 per cent. commission, and the other for the one-ninth interest in the Mexican Company.

3d. In case the executors should not receive anything from the above cases, then they are to allow and pay to the counsel upon the final termination of the suits the sum of one thousand dollars—that is, the sum of two hundred and fifty dollars for each of said four cases, and to be paid as aforesaid as each case is settled.

4th. If it should become necessary to employ additional counsel in any of the above cases, such additional counsel is not to be paid by the executors of Robert Oliver.

REVERDY JOHNSON,
THOMAS OLIVER,
Executor of R. Oliver.

Baltimore, May 20th, 1844.

It is agreed that the above shall be taken as an original produced by complainant, with same effect as if original had been produced by them.

G. L. DULANY,
Solicitor for Complainants.
J. M. CAMPBELL,
For Defendants.

Question. Will you state whether the sums of upwards of $3,900 paid on account of the share of James Williams, and upwards of $3,800 paid on account of the share of John Gooding, for counsel fees and expenses, as stated by you in your previous deposition, were so paid by said executors under any written contract either for the part or the whole thereof? Will you state further and particularly what was the nature and character of said services, and also for what and in what manner said expenses were incurred, and the times thereof?

Answer. For parts of the said sum of $3,900 and upwards, and $3,800 and upwards, there were written contracts, and for parts there were no written contracts. The two papers I now produce contain the respective items of those amounts thus paid. Those sums have never been refunded to the executors. The sums were paid in resisting the claim of Nathaniel Williams, trustee of Gooding, and also of Williams to the fund—I mean the items up to the 13th of March, 1852, inclusive. The sums paid since that date were paid in resisting the claims of the present complainants.

[The following are the two papers produced by the witness.]

Fees and other Expenses paid by the Executors of Robert Oliver on account of John Gooding's share.

						Voucher No.	
1842.							
March	15	To Thomas Alexander, for professional services	$500		½ is 503		$250
"	16	" William H. Gatchell, for same	200		" 504		100
"	"	" Reverdy Johnson, for same	150		" 505		75
"	"	" John Glenn, for same	150		" 506		75
December	31	" Clerk of Baltimore county court, for fees	179	36	545		11 11
1843.							
September	30	" John Carrere (Auditor)	25		⅓ is 583		8 33
1846.							
March	23	" John Carrere (Auditor)	40		" 679		13 33
1849.							
February	24	" J. V. L. McMahon, for professional services	500		¼ is 754		125
1850.							
April	3	" Clerk of the court of appeals, for fees	98	50	775		11 57
June	28	" J. V. L. McMahon, for professional services	6,954	96	say 777		1,336
"	29	" T. S. Alexander (Arbitrator)	50		⅕ is 778		12 50
July	8	" Clerk of the court of appeals	25	28	" 779		6 32
1851.							
July	18	" J. Murphy & Co. for printing briefs	66		796		19 50
September	5	" Reverdy Johnson, for professional services	516	07	798		11 88
"	"	" J. V. L. McMahon, for same	172	02	799		3 94

1852.							
January	21	To J. M. Campbell, for same	$1,130		⅛ is 807	$565	
"	"	" J. Murphy & Co. for printing briefs	27		" 808	13	50
						$2,637	98
1852.							
March	13	" Clerk of the Supreme Court U. S.	137	75	812	137	75
						$2,775	73
1853.							
March	15	" J. M. Campbell, for professional services	500		¼ is 825	125	
"	"	" Reverdy Johnson, for same	500		" 826	125	
December	3	" same, for same	250		" 833	62	50
"	"	" J. M. Campbell, for same	250		" 834	62	50
1854.							
May	2	" J. Murphy & Co. for printing records.	621		" 842	155	25
1855.							
January	8	" Reverdy Johnson, for professional services	500		" 850	125	
"	"	" J. M. Campbell, for same	500		" 851	125	
March	19	" Clerk of the Supreme Court, for fees	23	02	" 855	23	02
April	18	" Reverdy Johnson, for professional services	250		¼ is 860	125	
"	"	" J. M. Campbell, for same	250		" 861	125	
						$3,829	00

Fees and other Expenses paid by the Executors of Robert Oliver on account of James Williams's share.

					Voucher No.		
1842.							
March	15	To Thomas Alexander, for professional services	$500		½ is 503	$250	
"	16	" William H. Gatchell, for same	200		" 504	100	
"	"	" Reverdy Johnson, for same	150		" 505	75	
"	"	" John Glenn, for same	150		" 506	75	
December	31	" Clerk of Baltimore Co. court, for fees	179	36	545	7	91
1843.							
September	30	" John Carrere (Auditor)	25		⅓ is 583	8	33
1846.							
March	23	" John Carrere (Auditor)	40		" 679	13	33
1849.							
February	24	" J. V. L. McMahon, for professional services	500		¼ is 754	125	
1850.							
April	3	" Clerk of the court of appeals for fees	98	50	775	15	89
June	28	" J. V. L. McMahon, for professional services	6,954	96	say 777	1,336	
"	29	" T. S. Alexander (arbitrator)	50		¼ is 778	12	50
July	8	" Clerk of the court of appeals	25	28	" 779	6	32
1851.							
July	18	" J. Murphy & Co. for printing briefs	66		796	15	
September	5	" Reverdy Johnson, for professional services	516	07	798	11	88
"	"	" J. V. L. McMahon, for same	172	02	799	3	94
1852.							
January	21	" J. M. Campbell, for same	1,130		⅛ is 807	565	
"	"	" J. Murphy & Co. for printing briefs	27		808	13	50
						$2,634	60
1852.							
March	13	" Clerk of the Supreme Court U. S.	156	79	811	156	79
						$2,791	39

October 1853.	2	To J. M. Campbell, for stamp on bond	$12	¼ is 818		$6
March	15	" J. M. Campbell, for professional services	500	¼ is 825		125
"	"	" Reverdy Johnson, for same	500	" 826		125
April	6	" Clerk of the superior court	7 12	827		3 12
"	14	" Same	15 70	829		6 47
December	3	" Reverdy Johnson, for professional services	250	¼ is 833		62 50
"	"	" J. M. Campbell, for same	250	" 834		62 50
1854.						$3,181 98
May	2	" J. Murphy & Co. for printing records	621	¼ is 842		155 25
1855.						
January	8	" Reverdy Johnson, for professional services	500	850		125
"	"	" J. M Campbell, for same	500	" 851		125
March	19	" Clerk of the supreme court, for fees	82 94	854		82 94
April	18	" Reverdy Johnson, for professional services	250	¼ is 860		125
"	"	" J. M. Campbell, for same	250	" 861		125
						$3,920 17

Answer of David M. Perine—Continued.

The items of $250 paid on the 15th March, 1842, to Thomas S. Alexander, were paid for professional services, for appearing before the committee of the legislature upon the memorial of the executors of Oliver on their application for the law which afterwards passed; the act of 1841, ch. 309. The items of the 16th of March, 1842, paid to Gatchell, to Johnson, and to Glenn, were paid for professional services in getting that law passed; Grafton L. Dulany, esquire, appeared before the committee on the other side, representing the trustee, Nathaniel Williams. The items paid to the clerks of courts, (except the items of 13th March, 1852,) and the auditor, were paid for copies, not for what is called legal costs. The items of 24th February, 1840, and the 28th June, 1850, were paid for arguing the cases of the trustee of Williams and also of Gooding against the executors of Oliver and Glenn and myself, trustees, on the part of Oliver's executors, in the court of appeals of Maryland. The items of $12 50 paid to Thomas S. Alexander, were paid for services as arbitrator, in settling the amount to be paid to Mr. McMahon, as above mentioned. The items of 5th September, 1851, and 21st of January, 1852, were for counsel fees paid for same cases. The items of 18th of July, 1851, and 21st of January, 1852, paid to Murphy, were for printing briefs in same cases. The items of $156 79 and $137 75, paid 13th March, 1852, were for legal costs on writs of error to the court of appeals of Maryland, taken by Nathaniel Williams, trustee of James Williams, and also of John Gooding against the executors of Robert Oliver.

Question. Will you state whether in your former deposition you mean to be understood as saying, that all the money received by the executors of Oliver, on account of the shares and interests of John

Gooding and James Williams, were used by them for the purposes of the estate?

Answer. I have already stated all my knowledge on that subject, in my former deposition, as fully as I can do so.

And the said David M. Perine being cross-examined on behalf of the defendants by Reverdy Johnson, esquire, further answered and said as follows, to wit:

Question. Did you act as the agent of the executors of Oliver in employing Reverdy Johnson, and in making the contract between him and them, a copy of which has been offered in evidence?

Answer. Yes.

Question. Did you afterwards consult with him from time to time in relation to the cases affecting the fund in dispute? Were all the answers filed by the executors and yourself and Glenn, trustees, to the claims for the funds made by the trustees respectively of John Gooding and James Williams, Lyde Goodwin, and of Stump, and of the administrators of James W. Williams, prepared exclusively by him, and were all the arguments which were had in all the courts until the final determination of said cases in favor of the executors conducted in part by him?

Answer. I consulted Mr. Johnson often from the time the bill was filed by the trustee of John Gooding and of James Williams against this deponent and his co-trustee and the executors of Oliver. All the answers, both of myself and co-trustee and the executors of Oliver, were exclusively prepared by Mr. Johnson. The cases in the courts below, in Maryland, were exclusively argued by Mr. Johnson. In the court of appeals of Maryland the said cases were argued, as I was informed, by Mr. Johnson and Mr. McMahon, and in the Supreme Court of the United States by Mr. Johnson and Mr. Campbell.

Question. Will you state who were the counsel on the other side, and by whom were the cases argued on the other side?

Answer. In the court below, in Maryland, the cases were argued by Mr. Dulany and, I think, by Mr. Alricks, Mr. Schley, and Mr. Williams. In the court of appeals of Maryland I was not present at the argument, and therefore cannot say, from my personal knowledge, who did argue those cases—nor was I present in the Supreme Court of the United States, and do not know who argued the cases there.

Question. From your knowledge of the labor and services so rendered by said Johnson, will you state whether the amount of compensation paid him was in your opinion at all unreasonable?

Answer. I do not think the amount paid Mr. Johnson was at all unreasonable, for he had great labor, and his time was much taken up in preparing the papers, giving advice, attending to taking testimony, and arguing the cases in all the courts to which the same were carried, a part of it depending upon the contingency of success, as the contract will show.

Question. Have you any knowledge of what the counsel on the other

side were to receive, or any of them, in the event of their success? If so, state it.

Answer. I have not.

Grafton L. Dulany, esquire, then, at the request of the defendants' solicitors, made the following admission of facts, to be received as evidence offered on behalf of the defendants, to wit:

It is admitted by Mr. Dulany, that there is to be paid to the counsel of the complainants in the present cases, of Williams's administrator and Gooding's administrator against the executors of Robert Oliver, one-half of what is recovered in the case of Williams, and one-third in the case of Gooding, the counsel paying all the costs in Williams's case, and all the costs beyond $100 in Gooding's case. This was offered by the parties themselves, and is all that is to be paid by them. Mr. Nathaniel Williams is to get a portion of the fee to complainant's counsel, not to exceed $5,000. The contracts with Williams's administrator and Gooding's administrator are as follows, to wit:

BALTIMORE, 18*th March*, 1852.

Whereas, as administrator of my father, James Williams, I have a claim against the executors of Robert Oliver on account of money or stocks received by them, on account of the share which said James Williams had as a member of the Mexican Company of Baltimore; and whereas G. L. Dulany has agreed as counsel to prosecute said claim for a contingent fee of one-half of whatever may be recovered, after deducting costs, and to bear all expenses of suit or legal or equitable proceedings which may be necessary: Now, I do hereby agree to give to said Dulany one-half of whatever may be recovered, by suit or otherwise, first deducting costs; it being distinctly understood that if he recovers nothing, then he is to have no compensation, nor to be refunded any portion of the costs he may be put to under this agreement.

JOHN S. WILLIAMS,
Administrator of James Williams.

In consideration of the legal services heretofore and hereafter to be performed by Grafton L. Dulany in recovering a claim for the estate of John Gooding, late of the city of Baltimore, deceased, against the executors, legatees, or distributees of Robert Oliver, deceased, and which claim arose from said Gooding in his lifetime, being a member of the Mexican Company of Baltimore: Now I, the undersigned, do hereby agree to give said Dulany one-third of whatever may be recovered by suit or otherwise of said claim as a compensation for services performed, and to be performed by him, it being distinctly understood that his compensation is contingent only, and if nothing is recovered he is to have nothing. It being also distinctly understood, that the said Dulany is to do and cause to be done whatever is necessary in all

courts where the said claim shall be carried or otherwise for the successful prosecution of the same, and to pay all costs above one hundred dollars.

JOHN GOODING,
Administrator d. b. n. of John Gooding.

18 Nov., 1853.

In the former cases of Williams's and Gooding's permanent trustees, he (Dulany) was to have received, in the first instance, twelve and a half per cent. on the amount recovered on each share, as appears by the following contract, to wit:

BALTIMORE, *25 February*, 1846.

I hereby agree to give G. L. Dulany twelve and a half per cent. on the whole amount that may be recovered in my behalf upon my claims on the Mexican fund, now in Baltimore county court for distribution, which I hold as the permanent trustee of John Gooding, and also of James Williams; said twelve and one-half per cent. to be the only compensation to said Dulany for professional services rendered and to be rendered by him in the recovery of said claims. If nothing is recovered, then said Dulany is to have no compensation.

NATH'L WILLIAMS,
Trustee of John Gooding & Trustee of James Williams.

Subsequently another contract, doing away with the contract just set forth, was made by Mr. Dulany and Mr. Schley, with Nathaniel Williams, as trustee of Williams, and also as trustee of Gooding, which contract is as follows, to wit:

BALTIMORE, *April* 27, 1850.

In lieu of all former agreements, understandings or arrangements made between the undersigned, Nathaniel Williams, as trustee for the creditors of James Williams, and as trustee for the creditors of John Gooding, with the undersigned, Grafton L. Dulany, and the undersigned, William Schley, either jointly or separately, the following agreement is now made between said parties, to wit:

The said Dulany and the said Schley are to give all necessary and proper attention to the two cases now pending in the Supreme Court of the United States until the final decision of said causes; and in case they succeed in either of said causes, in whole or in part, they are each to receive twenty-five per cent. of what may come into the hands of the said Williams, as trustee of Gooding, and twenty-five per cent. each of what said Williams may recover, as trustee of said James Williams; add if nothing is recovered, then nothing is to be received for any past or future services.

NATH'L WILLIAMS,
Trustee, &c.

G. L. DULANY.
WM. SCHLEY.

In the case of Lyde Goodwin, Mr. Alricks and Mr. Dulany were to receive twenty-five per cent., as appears by the contracts, one made with Lyde Goodwin, and the other made with George M. Gill, esquire, the permanent trustee, as follows, to wit:

It is agreed this 5th day of January, A. D. 1842, between Lyde Goodwin and Grafton L. Dulany and Thomas P. Alricks, all of the city of Baltimore, that, for and in consideration of professional services rendered and to be rendered by the said Dulany and Alricks in and about the business of the said Goodwin, relative to certain claims upon the Mexican government, the said Goodwin agrees that the said Dulany and Alricks shall have one fourth between them, clear of all deductions, of whatever sums may be received under and by virtue of the treaty of the 12th June, A. D. 1840, between the American and Mexican governments.

Witness— his LYDE × GOODWIN. mark.

NATH'L W. WILLIAMS,
CHAS. NICHOLS.

Whereas G. L. Dulany and T. P. Alricks, before the filing of petitions by the subscriber, as permanent trustee of Lyde Goodwin, made known to the subscriber the fact, that he, as permanent trustee, was entitled to th of the Mexican expedition, and to a commission of 5 per cent., and agreed to conduct the said claims to final settlement upon a contingent compensation of twenty-five per cent. on the amount to be recovered, and whereas the subscriber considered said compensation reasonable and usual under the circumstances: Now, therefore, these presents have been given for the purpose of evidencing the said agreement, and that the same was entered into before the filing of the said petitions in the case of White and Thomas against the executors of Robert Oliver and others, in Baltimore county court, sitting as a court of equity, by the undersigned.

5 Dec., 1843. GEO. M. GILL, *P. T. L. G.*

On the 27th day of November, 1855, G. L. Dulany, esquire, on behalf of the complainant, filed with the Master the following notice and admission, to wit:

Circuit Court of the U. S.

GOODING, administrator of John Gooding,
vs.
OLIVER'S EXECUTORS.

WILLIAMS, administrator of Williams,
vs.
OLIVER'S EXECUTORS.

TO THE EXECUTORS OF ROBERT OLIVER:

GENTLEMEN: You will please produce the record of the proceedings to enforce the decree of the court of appeals in Thomas and

White vs. Smith and others, and which is referred to in your answer in the above case.

G. L. DULANY,
Solicitor for Complainant.

Service admitted.

REVERDY JOHNSON,
J. M. CAMPBELL.

27 Nov., 1855.

On the 28th day of November, 1855, J. M. Campbell and Reverdy Johnson, esquires, filed on behalf of the defendants with the Master, the following answer to the above notice, to wit:

WILLIAMS, administrator,
vs.
OLIVER'S EXECUTORS.

GOODING'S ADMINISTRATOR
vs.
OLIVER'S EXECUTORS.

In answer to the notice to produce a certain record, served on the 27 November, 1855, upon the solicitors of Oliver's executors in these cases, the said executors say that they are ready to produce all things which they undertake in their answers to produce, but they have not, by their answers or otherwise, undertaken, nor are they bound, to produce the record mentioned in said notice.

REVERDY JOHNSON,
J. MASON CAMPBELL,
Solicitors for Oliver's Executors.

28 Nov., 1855.

Afterwards the said G. L. Dulany appeared before the Master, and asked that the witness, David M. Perine, should be recalled for further examination, and the Master fixed the 18th day of December, 1855, and gave notice thereof to the solicitors of the respective parties.

On the 18th day of December, 1855, G. L. Dulany, esquire, on behalf of the complainant, and J. M. Campbell, esquire, on behalf of the defendants, appeared before the Master, and the said G. L. Dulany, on behalf of the complainant, filed the paper, herewith returned, marked Complainant's Exhibit, G. L. D., No. 1, and propounded to the said David M. Perine, who appeared at the same time, an interrogatory touching said exhibit, which interrogatory is hereinafter set forth, and the said David M. Perine desiring time to examine the said exhibit prior to answering the said interrogatory, the Master fixed the 22d day of December, 1855, for the further examination of the said witness, and gave notice to the solicitors of the respective parties.

On the 22d day of December, 1855, G. L. Dulany, esquire, on behalf of the complainant, and J. M. Campbell, esquire, on behalf of the defendants, appeared before the Master, pursuant to notice, and the said

David M. Perine being further examined, on behalf of the complainant, by Grafton L. Dulany, esquire, on the interrogatory herein set forth, deposed, answered and said as follows, to wit:

Interrogatory. Look at the copy of the record now shown you, marked Complainant's Exhibit, G. L. D., No. 1, and say whether it contains the orders, decrees, and attachments under which the money and funds were paid and delivered by you and your co-trustee, as is stated and referred to in your former examination? Have you not in your possession, as agent of the defendants, a copy of the same record, substantially, as that of the one now shown to you? Is the copy in your possession one of the copies, the cost of which is included in the accounts heretofore produced by you of sums paid by the executors of Oliver on account of the shares of James Williams and of John Gooding?

Answer. The paper now shown to me, marked Complainant's Exhibit, G. L. D., No. 1, contains a copy of the orders, decrees, and attachments under which the money and funds were paid and delivered by me and my co-trustee, as referred to in my former examination in these cases. I have in my possession, as agent of the defendants, a copy of what purports to be taken from the record of proceedings of the court of appeals of the State of Maryland, of which said orders, decrees, and attachments form a part, but on comparing the paper now shown to me, marked Complainant's Exhibit, G. L. D., No. 1, with the said copy in my possession, as aforesaid, I find there is some difference, as the one in my possession contains copies of some papers which I do not find in the said paper marked Complainant's Exhibit, G. L. D., No. 1; that is to say, the answers of J. Glenn and this deponent, as trustees, to the petition of the executors of Robert Oliver, filed the 12th March, 1850. Also the petition of George M. Gill, permanent trustee of Lyde Goodwin, of the 26th March, 1850. Also the opinion or order of the court of appeals of Maryland, on the "motion to prohibit the issuing of an attachment on the petition of G. M. Gill." Also what appears to be a certain admission of service, dated the 14th March, 1850, and signed "G. L. Dulany, Solicitor for Williams, Gill, and Alricks, Trustees, &c., &c.," of the petition filed by the executors the 12th of March, 1850. Also a certain acknowledgment in writing, dated March 14, 1850, and signed "Wm. Schley," of a certain notice having been given to him by John Glenn, esq. There is also some difference between the record in possession of this deponent and the one now shown to him marked *Complaint's* Exhibit, G. L. D., No. 1, in that some of the papers in the one are copied in a different succession of order from what they are in the other. With the exceptions thus stated above, this deponent believes the record in his possession, as aforesaid, is substantially the same as that of the one now shown to him marked "Complainant's Exhibit, G. L. D., No. 1." The deponent further states, that one-half of the cost of the copy in his possession, as aforesaid, is included in the accounts heretofore produced of sums paid by the executors of Oliver on account of the

shares of James Williams and of John Gooding; that is to say, one-fourth to each.

Thereupon the solicitors for the defendants filed with the Master the following exception, to wit:

WILLIAMS, administrator,
vs.
OLIVER'S EXECUTORS.

GOODING'S ADMINISTRATOR
vs.
OLIVER'S EXECUTORS.

The defendants in these cases except to the admissibility of the record of the court of appeals offered in evidence by the plaintiffs:

Because the same is on the face of it not a full record.

Because it is proved, by plaintiff's own witness, (Perine,) not to be a full record.

Because it is wanting in the several particulars detailed by the witness, Perine, in his testimony in regard to it.

REVERDY JOHNSON,
J. M. CAMPBELL.

Afterwards the solicitors for the defendants requested that Nathaniel Williams should be examined as a witness on behalf of the defendants, and the Master fixed the 29th day of December, 1855, for taking the evidence of the said witness, and gave notice thereof to the solicitors of the respective parties.

On the 29th day of December, 1855, G. L. Dulany, esquire, on behalf of the complainant, and J. Mason Campbell, esquire, on behalf of the defendants, appeared before the Master, and Nathaniel Williams was produced as a witness on behalf of the defendants, and the said Nathaniel Williams, having been by me first carefully examined and cautioned and duly sworn to testify the whole truth, and being examined on behalf of the defendants by J. M. Campbell, esquire, on the questions herein set forth, deposed, answered, and said as follows, to wit:

Question. Are you the Nathaniel Williams who, as permanent trustee in the insolvency of James Williams and John Gooding, set up claims in that character to the proceeds of said James Williams and John Gooding's shares in the Mexican Company of Baltimore, in the equity suit of White and Thomas vs. Glenn, Perine, and others?

Answer. I answer the question in the affirmative.

Question. Were the proceedings in said cause, on said claims in your name instituted, of your own mere motion, or at the request of any of the creditors of said Williams or Gooding? Who bore the costs and expenses of said proceeding from first to last?

Answer. They were instituted on my own motion, and not on any special application of any of the creditors. Some of the creditors were advised of the matter during its progress, and a large claim against both estates was left with me. I think, in the case of James Williams, there

was money enough on hand to pay the expenses—assets belonging to the estate. In Gooding's case, there was not fifty dollars in hand, and I bore the expenses myself, beyond what there was.

Question. Were you aware, at the time of the institution of those proceedings, that said Williams and Gooding were dead? State, if you know it, who are their distributees? Were any of them, and which of them, aware of the institution of those proceedings during the course of them?

Answer. I was aware of the death of both of them. John Gooding left a large family of children. The eldest is named John; a daughter, who married, I think, a man of the name of Dorsey; and there are others, whose names I cannot recollect. I know that James Williams had children, but don't know their names. I don't know personally that any of Williams's children had any knowledge of the matter, but heard that they had conversed about it. I saw John Gooding and conversed with him about the said proceedings.

Question. Have you rendered any, and if yea, what professional services to the complainants in these cases? Are you bound to render them any?

Answer. I am associated with Mr. Dulany to some extent in both cases, and he has frequently conversed with me about them, but I am not expected to take any part in the argument, or prepare the pleadings or attend the taking of the evidence.

Question. Were or are you in any manner or to any extent liable for the cost and expenses of these cases if lost?

Answer. I am not, I believe.

Question. Have you entered into any contract with the complainants in these cases, or any one for them, by which you are in case of recovery to receive any part of what may be recovered? State such contracts if in parol, or produce them if in writing, and say if such be the only contracts between you and the complainants?

Answer. I am to share in a portion of the fee in case there is a recovery. The contract is in writing, and is now in the Chesapeake Bank.

Question. What was the consideration on your part for the contracts proved by you in your answer to the last preceding question?

Answer. The consideration was to a small extent such professional services as I might render, but the chief consideration that induced Mr. Dulany to enter into said contract, in my opinion, was, that Mr. Dulany, who had been one of my counsel in the two cases in the county court, court of appeals, and Supreme Court of the United States, had by his advice to George M. Gill, the trustee of Lyde Goodwin, prevented a compromise of the three cases while pending and undecided in the court of appeals. The representatives of the Olivers refused to compromise my two cases, or either of them, unless the whole three were compromised. I agreed to compromise on the terms offered by the Olivers, which were, to divide the proceeds equally. Mr. Gill

refused, and, as I then understood, upon the advice of his counsel, Mr. Dulany; and it is my conviction, that it was owing to the opinion and advice of Mr. Dulany to Mr. Gill that the three cases were not compromised on those terms. All the other counsel on both sides advised the compromise, as also did the judges of the court of appeals. The compromise not being effected, all the cases were decided against the complainants in the court of appeals and in the Supreme Court of the United States. Had the compromise been made, I would have derived great profits from commissions and otherwise, as representing creditors. I learned afterwards from a common friend, that Mr. Dulany had expressed himself grieved at my having lost that chance of profiting by the compromise. In my own mind I am satisfied that Mr. Dulany was induced on that account, chiefly, to propose to me to share in the fee in the cases now pending. I think Mr. Dulany had conversations with me in which he stated that I should be as well or better off in the event of his succeeding in these cases.

Question. Were the distributees or representatives of Gooding or Williams to recover any part of the moneys if recovered on your aforesaid proceedings as permanent trustee?

Answer. I was to administer the estates according to the insolvent laws, and I can't tell whether there would have been any surplus after paying counsel fees and creditors.

The counsel for the complainant and the counsel for the defendants then announced that they had closed the taking of testimony.

Afterwards G. L. Dulany, esquire, on behalf of the complainant, appeared before the Master, and filed with him the paper herewith returned, marked Complainant's Exhibit, G. L. D., No. 2; which said exhibit was afterwards shown to the counsel for the defendants.

The complainant's counsel then filed with the Master the following exceptions, to wit:

The complainant excepts to the admissibility and relevancy of the depositions of James H. Causten, Richard Burgess, and John Mason, for the purpose for which the same were offered, as consisting of individual opinion and not applicable to any issue in this cause; also to the letters of Robert Oliver, and those to him, for the purpose of showing the character and value of his services; also to so much of the answers of David M. Perine which state the differences between the record of proceedings before the court of appeals produced by the complainant, and that of the same proceedings in his possession without the production of the same.

G. L. DULANY,
Complainant's Solictor.

Afterwards the counsel for the defendants appeared before the Master and filed the following exceptions, to wit:

WILLIAMS'S ADMINISTRATOR
vs.
OLIVER'S EXECUTORS.

GOODING'S ADMINISTRATOR
vs.
OLIVER'S EXECUTORS.

The defendants in these causes, and each of them, except to the admissibility in evidence of the record offered in proof by the complainants and each of them before the Master: because the same is not a full record, and is proved by the complainant's own witness to be a defective record in this—that it does not contain, 1st, The petition of G. M. Gill, trustee of Lyde Goodwin, praying the court to suspend all proceedings on the decree of the court of appeals, said petition having been filed 26th March, 1850; 2d, The decree of the court of appeals denying the prayer of the petition.

R. JOHNSON,
J. M. CAMPBELL,
Solicitors for Defendants.

And also filed the following directions for stating accounts, to wit:

WILLIAMS'S ADMINISTRATOR
vs.
OLIVER'S EXECUTORS.

GOODING, administrator,
vs.
OLIVER'S EXECUTORS.

The Master in these causes will please to state from the pleadings and proofs the following accounts:

1st. An account charging the defendants with the moneys which have actually come to their hands, and crediting them with the moneys actually paid out by them for counsel fees and other expenses as testified to by Mr. Perine, and also with one-half of the balance as the compensation of the defendants for Mr. Oliver's services and their own, as testified to by Mr. Causten.

2d. An account charging them as in No. 1, and crediting them with moneys actually paid out by them for counsel fees and other expenses before 1st April, 1852, as testified to by Mr. Perine, and also with one-half of the balance for compensation as in No. 1.

3d. An account charging them as in No. 1, and crediting them with one-half thereof, as compensation, as in No. 1.

4th. An account charging the defendants with five-eighths of the moneys actually come to their hands, and crediting them as in No. 1.

5th. An account charging the defendants as in No. 4, and crediting them as in No. 2.